

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

C.M.A.No.4465 OF 2004

JUDGMENT:

This appeal is filed by the appellant-claimant under Section 173 of the M.V. Act, aggrieved by the award, dated 08.07.2004, in O.P.No.1055 of 2001, passed by the IV Addl. Metropolitan Sessions Judge-cum-XVIII Addl. Chief Judge, Hyderabad, for enhancement of compensation.

2. Heard the learned counsel for the appellant, the learned standing counsel for the Insurance Company and perused the record.

3. Learned counsel for the appellant would submit that the Tribunal granted compensation of Rs.1,50,000/- only against the claim of Rs.2,00,000/- without taking the age of the deceased into consideration. The monthly income of the deceased was taken as Rs.1,500/- only, which is meagre and ultimately, prayed to enhance the compensation.

4. On the other hand, learned standing counsel for the Insurance Company would submit that the Tribunal had taken all the factors into consideration and awarded compensation of Rs.1,50,000/- with interest at 9% p.a., which is just and reasonable. There are no circumstances to interfere with the same and ultimately, prayed to dismiss the appeal.

5. The appeal against respondent No.1-owner of the vehicle was dismissed on 08.02.2016 for default. However, dismissal of the appeal for default against respondent No.1-owner of the vehicle is of no consequence

to decide the quantum of compensation, in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**¹, wherein it is held that:

"If the Claims Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged either by the Insurance Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore there cannot be any bar to decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle to the extent of the statutory liability of the Insurance Company. But the quantum of compensation cannot be decided over and above the statutory liability of the Insurance Company in the absence of the owners, but the question of the statutory liability of the Insurance Company survives for consideration at the appellate stage."

6. There is no dispute with regard to the death of the deceased due to rash and negligent driving of the driver of LP Gas Tanker lorry bearing No. KA 21-A/277. As seen from the material on record, the deceased was 24 years old as on the date of accident. He was an Electrician and earning Rs.4,000/- per month. The appellant, who is the mother of the deceased, was depending on him. The Tribunal had taken monthly income of the deceased as Rs.1,500/-. After deducting one third towards personal expenses and by applying multiplier 11, taking the age of the mother of the deceased, the Tribunal granted compensation of Rs.1,32,000/- towards loss of dependency. The Tribunal also granted Rs.15,000/- towards loss of estate, Rs.2,000/- towards funeral expenses and Rs.1,000/- towards transportation charges. In all, the Tribunal granted compensation of Rs.1,50,000/-. As per

¹ 2001(1) ALT 495 (D.B.)

the evidence on record, the deceased was an electrician. The Tribunal has taken meagre amount i.e., Rs.1500/- towards monthly income of the deceased. It ought to have taken something more. Further, the Tribunal had granted lesser amount towards loss of estate, funeral expenses and transport charges. Considering the totality of the facts and circumstances, the claimant is entitled to another sum of Rs.50,000/- under the conventional heads, such as, loss of love and affection loss of estate, funeral expenses etc., in addition to the amount of Rs.1,50,000/- granted by the Tribunal to them.

7. In the result, the compensation awarded by the Tribunal is enhanced from Rs.1,50,000/- to Rs.2,00,000/-. The appellant is entitled to interest at 7.5% p.a., on the enhanced compensation amount from the date of petition till the date of deposit. On deposit, the appellant is entitled to withdraw the same.

8. Accordingly, the Appeal is allowed. No order as to costs. Miscellaneous petitions, if any pending in this appeal shall stand closed.

DR.SHAMEEM AKTHER, J

DATED: 12-06-2018

Hsd