

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

M.A.C.M.A.NO.1900 OF 2012

JUDGMENT:-

Heard Sri Karri Suryanarayna, learned counsel for the appellant and Sri R.Venkat Rao, learned counsel for the respondents.

2. This appeal is filed questioning the order dated 20-02-2008 in M.O.P.No.411 of 2006 passed by the Motor Accidents Claims Tribunal-cum-V Additional District and Sessions Judge, Visakhapatnam.

3. The appellant is the claimant in the lower court. She is the mother of the deceased who died in a motor vehicle accident that occurred on 01-01-2006. O.P was filed claiming compensation of Rs.4,00,000/- together with interest and costs. On behalf of the appellant, two witnesses were examined and Exs.A-1 to A-4 were marked. Respondents did not introduce any oral evidence. After considering the oral and documentary evidence, the court below awarded the compensation of Rs.2,45,400/- along with interest. Questioning the same, the present appeal is filed by the dissatisfied petitioner.

4. Essentially the learned counsel for the appellant concentrated on the quantification of the damages. It is his

contention that the lower court did not appreciate the income of the deceased. According to the learned counsel for the appellant, the deceased was working as a labourer and in addition he was also doing toddy business. Therefore, the learned counsel questions the method on which the lower court came to a conclusion that the compensation of Rs.2,45,400/- alone can be awarded. The learned counsel points out that the deceased, who was the sole bread winner of the family, has died and that the claimant, who is the aged mother of the deceased, does not have any other source of income. Therefore, he prays that the appeal should be allowed and Rs.4 lakhs, as sought for, should be awarded.

5. In response thereto, the learned counsel for the respondent submits that there is absolutely no documentary or clear evidence to show the income of the deceased. The only witness other than the claimant is PW.2, who is the driver of the Auto. He was examined to prove the fact that the deceased was traveling in an Auto. He essentially deposed that the driver of the lorry drove the same in a rash and negligent manner and caused the accident. There is no other evidence available.

6. Coming to the impugned judgment also, this court notices that in para.13 of the judgment, the court below adopted the correct multiplier and also arrived at the

income basing on its own assessment. Although the claimant claimed monthly earning of the deceased was Rs.3600/-, which translates to Rs.120/- per day, the lower court took his daily income of Rs.60/- and calculated the monthly income of Rs.1800/- and after making necessary deductions, the annual income was calculated as Rs.14,400/-. This Court does not find any error in the said quantification nor was the learned counsel for the appellant able to point out any error in the said calculation. He only appealed for the sympathy of the court and asked the court to visualize the income that would be correct. This court cannot “visualize” the income and has to depend upon the evidence that is available in the circumstances. In the absence of any clear evidence and in the absence of any submission in the hearing that would justify the reversing finding, this court is of the opinion that the calculation adopted by the court below is not unreasonable. This court does not find any error vitiating the judgment that would warrant the interference by this court. There are no merits in the appeal.

Accordingly, the Appeal is dismissed. No costs. Miscellaneous Petitions pending, if any, shall stand closed in consequence.

D.V.S.S.SOMAYAJULU,J

30-10-2018
TSNR