

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No.441 of 2012

JUDGMENT :

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act"), is preferred by the appellants-petitioners seeking enhancement of compensation, challenging the Award and decree dated 28.10.2011 in O.P.No.203 of 2009 passed by the Chairman, Motor Accidents Claims Tribunal-cum-VII Additional District Judge (FTC), Madanapalle, Chittoor District (for brevity "the Tribunal"), awarding compensation of Rs.1,52,000/- as against the claim of Rs.4,00,000/- laid by them under Section 166 of the Act, for the death of their son – Yeshwant in a motor vehicle accident that occurred on 19.04.2008 near Peddagottigallu Cross on Tirupati-Piler Road.

2. Appellants are the petitioners, respondent No.1 is the owner of the crime Maruti-800 Car bearing No.AP-03/H-7171 and respondent No.2 – National Insurance Company Limited is its insurer. For the sake of convenience, the parties are referred to as they were arrayed in the O.P. before the Tribunal.

3. The brief facts of the case are that, on the fateful day on 19.04.2008, while the deceased – Yeshwant, who was aged about 8 years, was going to his house by walking on the left side of the road, the driver of the crime Maruti Car bearing

No.AP-03/H-7171 drove it in a rash and negligent manner and dashed against Mr. Yeshwant resulting in his death. The petitioners, who are parents of the deceased – Yeshwant, laid a claim of Rs.4,00,000/- towards compensation for the death of their son in the said accident. Respondent Nos.1 and 2, who are owner and insurer, respectively, of the crime Maruti Car bearing No.AP-03/H-7171 contested the claim. The Tribunal, on consideration of the evidence of the witnesses PWs.1 to 4 and the documentary evidence under Exs.A.1 to A.6 adduced on behalf of the petitioners, and also the evidence of RWs.1 and 2 and documentary evidence under Ex.B.1 adduced on behalf of the respondents, by the aforesaid Award and decree dated 28.10.2011, partly allowed the claim petition granting compensation of Rs.1,52,000/- with interest @ 6% per annum from the date of petition till the date of deposit against respondent Nos.1 and 2. Aggrieved by the said Award and decree, the petitioners have filed the present appeal seeking enhancement of compensation.

4. Heard learned counsel for the appellants-petitioners and no arguments were advanced on behalf of the respondents. Perused the material on record, including the impugned Award.

5. The point for consideration in this appeal is, whether the appellants-petitioners are entitled for enhancement of compensation?

6. Learned counsel for the petitioners contended that the petitioners are entitled for enhancement of compensation in terms of the judgment of the Apex Court in KISHAN GOPAL Vs. LALA¹, wherein the Apex Court has taken the income of the deceased minor boy as Rs.30,000/- for calculating the amount of compensation. It is further contended that the Tribunal went wrong in deducting 1/3rd towards personal expenses of the deceased, which is not required in the case of a minor boy.

7. In para-39 of the judgment in KISHAN GOPAL's case (supra 1), the Apex Court held as under:

“In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs.30,000/- and further taking the young age of the parents, namely the mother who was about 36 years old, at the time of accident, by applying the legal principles laid down in the case of [Sarla Verma v. Delhi Transport Corporation](#) {(2009) 6 SCC 121}, the multiplier of 15 can be applied to the multiplicand. Thus, 30,000 x 15 = 4,50,000 and 50,000/- under conventional heads towards loss of love and affection, funeral expenses, last rites as held in [Kerala SRTC v. Susamma Thomas](#) {(1994) 2 SCC 176, which is referred to in Lata Wadhwa v. State of Bihar's {(2001) 8 SCC 197} case and the said amount under the conventional heads is awarded even in relation to the death of children between 10 to 15 years old. In this case also we award Rs.50,000/- under conventional heads. In our view,

¹ (2014) 1 SCC 244

for the aforesaid reasons the said amount would be fair, just and reasonable compensation to be awarded in favour of the appellants.”

8. This is a case of death of a minor boy, aged about 8 years, in a motor vehicle accident. The dispute is in respect of notional income of the minor boy. In KISHAN GOPAL's case (supra 1) the Hon'ble Apex Court held that the notional income of a minor boy can be taken as Rs.30,000/-. Keeping in view the age of the minor boy, the appropriate multiplier applicable to his age was '15', as per the decision in SARLA VERMA's case (supra).

9. In view of the facts and circumstances in the present case and keeping in view the ratio laid down in KISHAN GOPAL's case (supra 1), this Court is of the considered view that the petitioners are entitled for a compensation of Rs.4,50,000/- (Rs.30,000/- x 15 = Rs.4,50,000/-) with interest @ 7.5% per annum on the enhanced amount.

10. In the result, the Civil Miscellaneous Appeal is allowed modifying the Award and decree dated 28.10.2011 in O.P.No.203 of 2009 passed by the Tribunal enhancing the compensation from Rs.1,52,000/- to Rs.4,50,000/- (Rupees four lakhs fifty thousand only) with proportionate costs and interest @ 7.5% per annum on the enhanced amount from the date of petition till realisation. The respondents are directed to deposit the compensation amount within one month from the date of receipt of a copy of this judgment. The appellants-

petitioners are directed to pay Court fee on the enhanced amount of compensation over and above the claim made by them. No order as to costs.

11. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

GUDISEVA SHYAM PRASAD, J

23.02.2018.
Msr



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