THE HON'BLE SRI JUSTICE PULLA KARTHIK

M.A.C.MA. No.120 of 2019

JUDGMENT:

This Motor Accidents Civil Miscellaneous Appeal is filed by the claimants challenging the order and decree passed in OP No.130/2016, dated 15.10.2018 on the file of Motor Accidents Claims Tribunal-cum- I Additional District & Sessions judge, Adilabad (for short "the Tribunal"), wherein the learned Tribunal had awarded a compensation of Rs.7,60,000/-, as against the claim of Rs.15,00,000/- on account of death of Gonti Suresh in a motor vehicle accident that occurred on 18.07.2015.

2. The case of the appellant in brief:

That on 18.07.2015 deceased Gonti Suresh along with his wife and minor daughters, while proceeding to Nandana village on motor cycle bearing No. AP-01-7903 and when they reached in front of P.S.Narsapur G, all of a sudden an offending lorry bearing No.MH-18-M5423 driven by respondent No.1 came in a rash and negligent manner and dashed to motorcycle due to which pillion riders, i.e. appellant No.1 and 2 sustained injuries on skull, face, chest and other parts of the body and death of the deceased and his wife there itself. It is pleaded that the accident occurred exclusively due to the rash and negligent driving of the driver of the crime vehicle Lorry.

3. It is pleaded that as on the date of accident the deceased was hale and healthy and aged 31 years and used to earn Rs.15,000/- per month by way of doing labour and used to contribute the same towards the welfare of the petitioners. It is further pleaded that due to unexpected death of their father, the petitioners were put to loss mentally, physically and monetarily.

4. In the Tribunal, respondent No.1 and 2, driver and owner of offending vehicle bearing No.MH-18-M 5423 remained exparte and respondent No.3 and 4 filed their counters.

5. The respondent No.3/Cholamandalam Ms. General Insurance Company filed its counter before the Tribunal denying the petition averments. It is pleaded that there was no negligence on the part of the driver of the offending lorry and the petitioner have to establish the earning capacity of the deceased. It is further pleaded that the petitioners have to prove the age, income and avocation of the deceased and the petitioners are dependents of the deceased. It is further pleaded that the petitioners has to establish that the driver of the offending vehicle was having valid and subsisting driving licence and said vehicle was insured with Respondent No.3.

6. Basing on the above pleadings the following issues have been framed by the Tribunal

1) Whether the accident dated 18.07.2015 was due to the rash and negligent driving of lorry bearing No.MH-18-M-5423 and the accident resulted in the death of the deceased/Gonti Suresh or

whether there was any contributory negligence on the part of deceased?

2) Whether the petitioners are entitled for compensation, if so, to what amount and from whom?

3) To what relief?

7. On considering the evidence and material on record the Tribunal was pleased to allow the petition in part and awarded compensation of Rs.7,60,000/- and fixed the liability against the respondent 1to 3 jointly and severally to pay compensation.

1.	Loss of Income	Rs.7,20,000/-
2.	Funeral Expenses	Rs.15,000/-
3.	Loss of estate	Rs.15,000/-
4.	Transport Charges	Rs.10,000/-
	Total	Rs.7,60,000/-

8. Heard both sides and perused the record.

9. The appellant contends that the Tribunal failed to consider Ex.A7 which clearly shows that the deceased was drawing salary of Rs.15,000/- per month by working as Muneem under PW3. It is further contended that the Tribunal erred in taking the income of the deceased as Rs.5,000/- per month which is very much lower side. It is further contended that the Tribunal failed to award future prospects, and failed to award the consortium to minor daughters and parents of the deceased. It is further contended that the Tribunal awarded meagre amounts towards funeral expenses, transportation charges, loss of love and affection and loss of estate.

10. In contra, the respondent contends that after considering the evidence and material on record, the Tribunal had rightly passed an award. It is further contended that there is no error in the order of the Tribunal and requested to dismiss the appeal.

11. This Court has taken note of the submissions made by the respective parties.

12. According to PW1, the deceased was used to earn a sum of Rs.15,000/- per month under the employment of Koona Ravi Kumar, civil contractor Class III and to establish the same the petitioners have examined Koona Ravi Kumar as PW3. He deposed that deceased worked as labour at his civil work place under the control and supervision from April 2013 till his death and his last month salary for the month of June, 2015 was Rs.15,000/- per month including all benefits. In his cross examination he deposed that the salary of deceased does not come under G.P.F. scheme and he has shown the name of the deceased in his income tax returns and used to pay salary in cash. As except self serving oral testimony of PW3, there is no material before the court that the deceased worked under him as Mukkaddam at his work place. Therefore, the Tribunal considering the fact that the deceased was an agriculturist as reflected in their own document i.e. charge

sheet and relying on the judgment of Hon'ble Apex Court in Ram Chandrappa Vs. Manager Royal Sunderan reported in 2011 ACJ 2436 (SC and 2010 (6) SCJ 886. The Tribunal had justified in taking monthly income as Rs.5,000/-, considering him as agriculturist i.e. Rs.5,000x12=Rs.60,000/- per annum. The age of the deceased was shown as 35 years in Ex.A2 i.e. PME report. The Tribunal had justified in taking the age of the deceased as 35 years and applying the appropriate multiplier 16. As the deceased was self employed and below the age of 40 years the appellants are entitled to 40% addition to the established income of the deceased towards future prospects as per Pranay Sethi's case and 1/4th to be deducted towards personal expenses. As 5,000+5000x 40/100 = 5,000 + 2,000= 7,000-7,000/4 =5,250 x12x16= Rs.10,08,000/-. As per the judgment in Hon'ble Apex court in Magma's case the appellant No. 1 and 2 are entitled to Rs.40,000/- each towards parental consortium and appellants No.3 and 4 are entitled to Rs.40,000/- each towards filial consortium which comes to Rs.1,60,000/-.

13. Hence the compensation award is as under:

1.	Loss of Income	Rs.10,08,000/-
2.	Funeral Expenses	Rs.15,000/-
3.	Loss of estate	Rs.15,000/-
4.	Transport Charges	Rs.10,000/-
5.	Consortium (40,000x4)	Rs.1,60,000
	Total	Rs.12,08,000/-

14. With these modifications Motor Accidents Civil Miscellaneous Appeal is disposed of. The compensation amount awarded by the learned Tribunal is hereby enhanced from Rs.7,60,000/- to Rs.12,08,000/-. The enhanced amount will carry interest at 7.5% p.a. from the date of petition till the date of payment. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE PULLA KARTHIK

Date: 08.09.2022
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