

THE HON'BLE SRI JUSTICE PULLA KARTHIK

MACMA.NO.2774 OF 2019

And

I.A.NO.1 OF 2022

COMMON ORDER:

1. This appeal is filed by the claimants, aggrieved by the Award and Decree, passed in MVOP. No. 633 of 2017 dated 14-05-2019 on the file of the Motor Accidents Claims Tribunal (Principal District Judge) at Khammam, wherein the Tribunal awarded compensation of Rs.3,19,000/- as against the claim of Rs.15,00,000/- on account of the death of V.Manish in a motor cycle accident that occurred on 3.6.2017.

2. While the appeal is pending IA No. 1 of 2022 is filed to remand the case MVOP No.663 of 2017 on the file of the Motor Accidents Claims Tribunal (Prl. District Judge) at Khammam for additional evidence to mark the educational qualification certificates of the petitioner's deceased son as exhibits and adduce other evidence on their behalf for proper adjudication of the matter, otherwise the petitioners will suffer irreparable loss and injury which cannot be compensated in any manner. An affidavit is filed stating that at the time of accident her deceased son was aged about 19 years and studied polytechnic diploma in mechanical engineering.

3. The case of the appellant in brief:

That on 03-06-2017 at about 2:30 AM, the deceased and his friend were proceeding on motor cycle bearing No TS 04 ED 3111 to attend the function towards Sri Sri Circle and when they reached near Tekulapalli bridge the Lorry bearing No. TS 05 UB 5888 which was coming from opposite direction in a rash and negligent manner with high speed dashed the motor cycle. Resultantly, the deceased suffered fatal injuries and another sustained grievous injuries. It is pleaded that the deceased was shifted to Bhavani Hospital, Khammam and thereafter referred to Yashoda hospital, Secunderabad where he was died while undergoing treatment.

4. It is pleaded that at the time of accident, the deceased was 19 years of age. He was a polytechnic student and completed 2nd year and also running tuitions and he was earning Rs.10,000/-p.m. It is pleaded that on account of death of the deceased, the petitioners have been deprived of the contribution of deceased.

5. The first respondent set ex-parte before the Tribunal. The 2nd respondent/insurance company filed its counter and denied the accident as narrated by the appellant and involvement of the Lorry, rash and negligence on the part of the driver of the Lorry and also denied the death of the deceased in the accident.

It is further denied the age and avocation and earnings of the deceased. It is further pleaded that the driver of the lorry was not holding any licence. As such company is not liable to pay compensation.

6. It is further pleaded that the driver of the motor cycle was responsible for the accident as he was driving the vehicle in a rash and negligent manner.

7. Basing on the above pleadings, the following issues were framed by the tribunal.

i) Whether the accident is occurred due to rash and negligent act of driver of the Lorry bearing No. TS 05 UB 5888 resulting in the death of V.Manish?

ii) Whether the petitioners are entitled to compensation as prayed? If so, to what quantum, and from which of the respondents?

iii) To what relief?

8. The appellants to support their case examined PW1 and PW2 and relied upon Ex.A1 to A4. The respondent No.2/ insurance company has relied upon Ex.B1 policy.

9. On considering the evidence and material on record the Tribunal was pleased to allow the petition in part awarding a compensation of Rs.3,19,000/- against the respondents with

future interest at 7.5% per annum from the date of the petition till the date of realization as below:

1. Loss of dependency	Rs.1,89,000/-
2. Funeral expenses	Rs.15,000
3. Loss of estate	Rs.15,000/-
4. Loss of love and affection	Rs.1,00,000/-
Total	Rs.3,19,000/-

10. Heard both sides and perused the record.

11. The appellant contends that the Tribunal below grossly erred in considering the income of the deceased at Rs.15,000/- per annum only by fixing notionally without looking into the facts and circumstances of the case. It is further contended that the Tribunal miserably failed to appreciate the evidence of PW1 and 2 and the documents marked under Ex.A1 to A4 on behalf of the appellants. The appellant further submits that he filed IA No.1 of 2022 along with the appeal.

12. An affidavit is filed in IA No.1 of 2022 stating that at the time of accident her deceased son was aged about 19 years and studying polytechnic diploma in mechanical engineering. It is stated that after the accident they have shifted their residence and while shifting the house the educational certificates of deceased son were misplaced somewhere due to which they could not file the educational certificates of their deceased son

before the learned tribunal at the time of adducing their evidence and the tribunal in the absence of educational certificates of their deceased son before the tribunal at the time of adducing their evidence and the tribunal in the absence of educational certificates considered the income of the deceased at Rs.15,000/- per annum as notional income and awarded meagre amount of Rs.3,19,000/- compensation only.

13. The petitioner submits that the Tribunal by awarding very meagre amount gave a finding that her deceased son has no proof of his educational qualifications and he was treated as a non earning member and considered notional income. Hence the petitioner submitted to remand the matter in the trial court for additional evidence to mark the educational qualification certificates as Exhibits and other witnesses on their behalf for proper adjudication of the matter.

14. The respondent submits that in the award the name of the deceased son is recorded as V.Manish, but in the certificates filed by the appellant it is shown that the name of the deceased in SSC certificate as V.Mahesh.

15. In view of the above submissions, this court is of the opinion that it is appropriate to remand back to the court below for verification and marking of the educational qualifications certificates and adduce additional evidence if any. The court

below is directed to give equal opportunity to both the parties for adducing oral and documentary evidence and directed to decide the matter on merits.

16. Accordingly IA No. 1 of 2022 is allowed and MACMA is disposed of with a direction to decide the matter on merits as early as possible preferably within a period of 6 months.

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

JUSTICE PULLA KARTHIK

27.09.2022
dgr

THE HON'BLE SRI JUSTICE PULLA KARTHIK

MACMA. NO. 2774 OF 2019

27.09.2022

Dgr.