

HON'BLE SRI JUSTICE GHULAM MOHAMMED

M.A.C.M.A.No.1486 of 2005

Dt: 24-3-2011.

Between:

SMT.BISMILLA BEE
AND OTHERS

..

APPELLANTS

v.

MOHD.ABDUL KHADER
AND OTHERS

..

RESPONDENTS

THE HON'BLE SRI JUSTICE GHULAM MOHAMMED

M.A.C.M.A.No.1486 of 2005

JUDGMENT:

- 1) The claimants filed this appeal under Section 173 of the Motor Vehicles Act, dissatisfied with the compensation awarded by the Tribunal in O.P.No.1249 of 1999 in its order dated 30-6-2004 for the death of deceased Khader Qureshi in the motor vehicle accident that occurred on 25-3-1999.
- 2) The facts in nutshell are that on 25-3-1999 at about 2030 hours Khader Qureshi and K.Kistappa were proceeding in

Chetak scooter bearing No.AP 23 4466 from Gopalapuram village towards Tandur. Deceased was pillion rider of the scooter and when they reached near TRC club, Tandur one lorry bearing No.ATR 2225 came from the opposite direction driven by its driver in high speed in rash and negligent manner and dashed against the scooter, as a result both of them fell down under the wheels of the lorry and died on the spot. They were shifted to Government Hospital, Tandur. Police registered a case in Crime No.43 of 1999 and investigated the matter. The trial court has taken the income of the deceased-Khader Qureshi as Rs.15,000/- per annum and was aged about 20 to 25 years at the time of accident, therefore the claimants claimed a sum of Rs.4,00,000/- for the untimely death of the deceased-Khader Qureshi.

- 3) Before the Tribunal the owner of the lorry 1st respondent remained ex-parte. The 2nd respondent-insurance company filed counter denying the averments made in the claim petition. The Tribunal after framing necessary issues and considering the evidence of PWs 1 to 4 and Exs.A-1 to A-7 on behalf of the claimants, and in the absence of any rebuttal evidence by the respondents therein, by applying the principle of *res-ipsa loquitur*, rightly so, held that the accident occurred due to rash and negligent driving of the driver of the lorry, and awarded compensation of Rs.1,72,000/- with interest at 9% per annum from the date of petition till realisation. Dissatisfied with the quantum of compensation, the claimants preferred this appeal.
- 4) Heard learned counsel appearing on both sides and perused the record.
- 5) Learned counsel for the appellants-claimants contended that the deceased was working at old vegetable market, Tandur and that the Tribunal did not applied the proper multiplication method for awarding the just compensation. On the other hand, learned counsel supported the impugned order.
- 6) In the instant case, it is not in dispute that the deceased was working in vegetable market, Tandur and was aged between 20 to 25 years at the time of his death, therefore, in the absence of

any evidence to the effect that the deceased was working and earning Rs.4,000/- per month, an amount of Rs.2,500/- per month as his income would suffice, hence his yearly income would come to Rs.30,000/- and as his 45 years aged mother was dependent on him hence after deducting 1/5th of the amount towards personal expenses the loss of dependency annually comes to Rs.24,000/-. Considering the fact that the deceased died at the age of 20 to 25 years, the appropriate multiplier as per the judgment of the Supreme Court in SARLA VERMA v. DELHI TRANSPORT CORPORATION (2009 (6) SCC 121), is 14, the total loss of dependency comes to Rs.3,36,000/- (i.e. Rs.24,000 x 14 = 3,36,000). In the facts and circumstances of the case, the claimants are entitled for an amount of Rs.3,36,000/- towards loss of dependency, a sum of Rs.10,000/- towards loss of estate and mental agony, a sum of Rs.10,000/- towards loss of consortium and Rs.5,000/- towards funeral expenses.

- 7) In the result, the appeal is allowed in part enhancing the compensation from Rs.1,75,000/- to Rs.3,61,000/-. The enhanced compensation shall carry interest at 6% per annum from the date of petition till realisation. No costs.

GHULAM MOHAMMED, J.

Dt: 24-03-2011

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