HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

AND

HON'BLE SMT. JUSTICE M.G. PRIYADARSINI

M.A.C.M.A. No.3261 OF 2018

JUDGMENT: *(Per Hon'ble Dr. Justice Chillakur Sumalatha)*

Challenge in this Motor Accidents Civil Miscellaneous Appeal is the Award passed by the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Ranga Reddy District, at L.B.Nagar, in M.V.O.P.No.46 of 2016, dated 02.07.2018.

2. Heard Sri K.S.N.Murthy, learned counsel for the appellant, as well as Sri Akkam Eshwar, learned counsel appearing for respondent Nos.1 to 5.

3. The main challenge is in respect of the amount awarded as compensation. Making his submission, learned counsel for the appellant/Insurance Company contends that without any proof about the permanent employment of the deceased Mintu Singh (hereinafter referred to as 'the deceased' for brevity), his income was taken by the Tribunal as Rs.11,000/- per month and 50% of the said amount was added towards future prospects, which is

unjustifiable and therefore, if the said figures are revisited, just compensation can be arrived at.

4. On the other hand, the submission of learned counsel appearing for respondent Nos.1 to 5/claimants is that through the evidence of PW-3, it is clearly established that the deceased was a skilled labourer and therefore, the Tribunal took the monthly income of the deceased as Rs.11,000/- per month and indeed PW-3 also deposed the same.

5. A perusal of the record goes to show that no material is produced to show that the deceased indeed was employed under PW-3 and he was drawing a sum of Rs.11,000/- per month. But the testimony of PW-3 can be taken into consideration to the extent that the deceased was working as a Welder as the same is the version of the claimants also. However, having regard to the absence of any proof with regard to the exact income of the deceased as on the date of his death, we are of the view that a sum of Rs.7,500/- per month can be taken to be the income of the deceased being a skilled worker. If the said figure is taken into consideration, the annual income of the deceased comes to

Rs.90,000/-. As per ExA4 Post Mortem Certificate the deceased was aged about 30 years as on the date of his death. As no proof is produced to say that the deceased was a permanent employee, as per the decision of the Hon'ble Apex Court in ***National Insurance Company Ltd. Vs. Pranay Sethi and others***[1]**,** 40% of the annual income of the deceased ought to have been added towards future prospects. Thus, the annual income of the deceased together with future prospects comes to Rs.1,26,000/- (90,000/-+36,000/-). Admittedly, the dependants are five in number. Therefore, as per the decision of the Apex Court in ***Sarla Verma & Others Vs. Delhi Transport Corporation & Another***[2] ***case,*** 1/4th of the income of the deceased has to be deducted towards the personal living expenses, which the deceased would have incurred for himself, had he been alive. Therefore, the annual contribution of the deceased towards respondent Nos.1 to 5 comes to Rs.94,500/- (1,26,000-31,500). As the deceased died at the age of 30 years, as per the decision that is referred 2nd supra, the appropriate multiplier would be

[1] (2017) 16 SCC 860

[2] ACJ 2013 Page 1409

applied is ‘17’. Thus, the loss of dependency comes to Rs.16,06,500/-. Under the conventional heads as per the decision of the Hon’ble Apex Court in the case referred first supra, Rs.77,000/- has to be added. Also as respondent No.2/claimant No.2 is a minor, Rs.40,000/- has to be added towards loss of parental consortium. Hence, the compensation entitled by respondent Nos.1 to 5/claimants under all heads comes to Rs.17,23,500/-. Therefore, we are of the considered view that the Tribunal went wrong in awarding a sum of Rs.25,64,000/- towards compensation.

6. Resultantly, the appeal is allowed in part. Respondent Nos.1 to 5/claimants are entitled to Rs.17,23,500/- towards compensation. The said amount carries interest as indicated by the Tribunal. The appellant and respondent Nos.6 and 7 are directed to deposit the said amount within one month. Out of the said amount, respondent No.1/claimant No.1 is entitled to Rs.6,23,500/-, respondent No.2/claimant No.2 is entitled to Rs.5,00,000/-, respondent No.3/claimant No.3 is entitled to Rs.1,00,000/-. The rest of the amount to be apportioned among respondent Nos.4 and 5/claimant Nos.4 and 5 equally. On

deposit of the awarded amount, respondent Nos.1, 3 to 5/ claimant Nos.1, 3 to 5 are permitted to withdraw entire amount, as per their entitlement. The compensation awarded in favour of respondent No.2/claimant No.2 shall be kept in Fixed Deposit till he attains the age of majority. On his attaining the age of majority, he is entitled to withdraw the same along with accrued interest.

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

Dr. JUSTICE CHILLAKUR SUMALATHA

SMT.JUSTICE M.G. PRIYADARSINI

Date: 03.02.2023
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