



(BY SRI.M.K.SOUDAGAR, ADVOCATE FOR R2;
NOTICE TO R1 AND R3 ARE DISPENSED WITH)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 173(1) OF MV ACT 1988, AGAINST THE JUDGMENT AND AWARD DATED 03.11.2011 PASSED IN MVC NO.503/2011 ON THE FILE OF THE MOTOR CLAIMS TRIBUNAL AT BELLARY, PARTLY ALLOWING THE CLAIM PETITION FOR COMPENSATION AND SEEKING ENHANCEMENT OF COMPENSATION.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, THE COURT DELIVERED THE FOLLOWING:



JUDGMENT

Though the matter is listed for admission with the consent of the learned counsel for the parties, matter is taken up for final disposal.

2. Heard Miss.Sowbhagya Vakkund for Sri.Y.Laxmikanth Reddy and Sri.M.K.Soudhagar for respondent No.2.

3. Claimants are the parents and siblings of the minor girl by name Roopa who was aged 10 years who lost her life in a road traffic accident that occurred on 27.08.2010 at about 2.30 p.m. The unfortunate incident occurred when she has been to petty shop to procure some household articles and was returning to the house. Accident occurred on account of the rash and negligent driving of the driver of the tractor bearing No.KA-34/T-9155. As a result, minor girl has sustained grievous injuries. Injured minor girl was shifted to primary health Center, Kurugod. Despite best treatment, she succumbed to the injuries. Her parents and sisters are the claimants who laid a claim for awarding suitable compensation.



4. Claim petition was resisted by filing necessary written statement by the insurance company of the tractor.

5. Tribunal raised the following issues:

Issues

1. "Whether the petitioners prove that the deceased Roopa died in an accident that occurred on 28.08.2010 at about 3.00 p.m., in front of the house of the petitioners at Somalapura village, due to the rash and negligent driving of the Tractor bearing Regn. No.KA-34/T-9155 by its driver, the Respondent No.1?"

2. Whether the petitioners are entitled to the compensation? If so, from whom and to what extent?

3. What Order or Award?"

6. In order to prove the claim of the claimants, the father of the deceased Hanumantha got examined himself and placed on record six documents comprising of FIR, Complaint, Seizure panchnama, spot panchnama, Charge sheet, postmortem report and IMA report.



7. Respondent did not choose to lead any oral evidence but on behalf of the insurance company, policy is marked as Ex.R1 by consent.

8. Tribunal on consideration of oral and documentary evidence placed on record, as the law existed governing the field of awarding compensation of a minor as on the date of passing the judgment, allowed the claim petition in part and granted sum of Rs.2,25,000/-.

9. Being aggrieved by the same, claimants are in appeal.

10. Smt.Sowbhagya, representing the counsel for appellant reiterating the grounds urged in the appeal memorandum contended that by following the dictum of Hon'ble Apex court in the case of ***Kishan Gopal and another vs. Lala and others***, reported in ***(2014)1 SCC 244***, claimants are entitled for compensation of Rs.5,00,000/- with interest at 6% per annum.



11. Per contra, Sri.M.K.Soudhagar contended that at the time of passing the award, based on record and the relevant legal principles enunciated in the case of ***S.Sana Ulla and another Vs. A.R.Shivashankar and others*** reported in ***2008 (3) KCCR 1637***, allowed the proper compensation and therefore appeal needs to be dismissed.

12. In view of the rival contentions of the parties, this court has perused the material on record meticulously.

13. The law of awarding suitable compensation in respect of death of a minor is no longer *res-integra*.

14. In the case of ***Kishan Gopal and another***, supra, Hon'ble Apex court while considering the relevant aspects of the matter ruled that in the case of death of a minor in road traffic accident, the claimants would be entitled for compensation in a sum of Rs.5,00,000/-.

15. In the case on, no doubt the victim is minor girl. There cannot be any discrimination between a minor girl or minor boy.



16. Therefore, parents and sibling of the minor girl are also entitled to be awarded with compensation in a sum of Rs.5,00,000/- as against sum of Rs.2,25,000/- awarded by the tribunal. Only on the ground that the deceased is a girl, the award of compensation cannot be different than what is held in the case of ***Kishan Gopal and another***, supra.

17. Accordingly, the following:

ORDER

i) Appeal is allowed.

ii) As against compensation of Rs.2,25,000/- awarded by the tribunal, claimants are entitled for compensation of Rs.5,00,000/- with 6% interest per annum from the date of petition till realization.

iii) Ordered accordingly.

Sd/-
JUDGE