

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2009
(Arising out of SLP (C) No. 21324 of 2007)

D. Shanmukha Sundaramma

....Appellant

Versus

D. Suneeetha and Ors.

....Respondents

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Leave granted.
2. Heard learned counsel for the appellant.
3. None appears on behalf of the respondents in spite of service of notice.

4. Challenge in these appeals is to the order passed by a learned Single Judge of the Andhra Pradesh High Court.

5. The background facts in a nutshell are as follows:

One Sudhakar Rao (hereinafter referred to as the ‘deceased’) lost his life in a vehicular accident on 13.11.1998. He was an Auto-driver who was driving Auto Rickshaw No.AP 26 6164. A lorry bearing No. ATC-1035 dashed against the auto rickshaw resulting in the death of the deceased. The claimant filed a claim petition under Section 166 of the Motor Vehicles Act, 1988. A sum of Rs.4,00,000/- was claimed as compensation by respondent No.1 who is the widow of the deceased. One E. Lokanadham Naidu was the owner of the offending vehicle. In the claim petition, the owner as well as M/s United India Insurance Company Ltd. (hereinafter referred to as the ‘insurer’) were impleaded as parties along with the present appellant, who is the mother of the deceased. It was indicated in the claim petition that both the claimant and the present appellant were entitled to compensation. Appellant filed a counter affidavit before the Motor Accident Claims Tribunal, cum-IVth Additional District Judge, Tirupathi (hereinafter referred to as ‘MACT’) taking the stand that after the death of the deceased

the claimant had deserted her and was not looking after her welfare and, therefore, she was also entitled to compensation in equal measure along with the claimant. The MACT, by award dated 21.8.2000 in O.P. No.101 of 1999 awarded compensation of Rs.3,40,068/- along with 12% interest. Costs were also awarded. The MACT directed that the amount should be paid equally to the claimant and the present appellant. Any amount paid under Section 140 of the Act was to be adjusted from the amount payable on the basis of the award. The matter was challenged in appeal by the claimant.

Basic question was whether the Tribunal was justified in directing equal opportunity. The present appellant took the stand that the claimant was engaged as a Home guard and that she was living separately. But she denied the stand that she was getting Rs.80/- per day. It was stated that she was receiving much less. The appellant's stand was that she was solely dependant for her livelihood on the earning of her son. The High Court was of the view that the claimant was hardly 20 years of age and, therefore, a sum of Rs.50,000/- was directed to be paid to the present appellant and the balance to the claimant widow.

6. Learned counsel for the appellant submitted that the approach of the High Court is clearly erroneous.

7. It is pointed out that total amount deposited by the Insurance Company is Rs.4,22,438/-. On the basis of the High Court's order, both the appellant and the widow of the deceased have withdrawn one fourth amount each. The insurer has filed an affidavit indicating that it has no role on the question of apportionment which has to be decided by the court. In any event, the interest as awarded, is much higher than what is normally awarded.

8. Stand of the claimant before the MACT and the High Court appears to be that the present appellant is being maintained by her son, but she has no one to depend upon.

9. Though there appears to be some substance in the plea of the insurer regarding the rate of interest, in the absence of any appeal by it, there is no scope for interfering with the rate. Had there been any appeal, there would be certainly scope for interference.

10. The only issue in the present appeal is the amount to which the present appellant i.e. the mother of the deceased would be entitled. Considering the peculiar facts of the case, the age of the widow and that of the present appellant, we think it would be appropriate to grant a sum of Rs.1,25,000/- (Rupees One Lakh and Twenty Five Thousand only) to the appellant and the balance to the claimant–wife i.e. the widow of the deceased.

11. The appeal is allowed to the aforesaid extent without any order as to costs.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(Dr. MUKUNDAKAM SHARMA)

New Delhi,
February 09, 2009