

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.2832 of 2015

-

JUDGMENT:

The appellant—Insurance Company filed this appeal having been aggrieved by the Order/Award of the Motor Accidents Claims Tribunal-cum-I Additional District Judge, East Godavari District, Rajahmundry, (for short, 'Tribunal') in O.P.No.573 of 2007 dated 18.07.2011 awarding compensation of Rs.2,50,000/- with interest at 7.5% per annum against respondents as claimed by the claimants who are younger brother and father of deceased Putta Lakshmana Rao @ Chinna, who died in the motor accident dated 14.05.2006 under Section 163-A of the Motor Vehicle Act, 1988 (for short, 'the Act').

2) Heard learned counsel for appellant. The 4th respondent—owner of the lorry, even served failed to attend hence taken as heard.

3) The contention of the insurer in the grounds of appeal that the deceased was a cleaner of lorry of 2nd respondent entrusted by 1st respondent driver to him to drive and in that course while he was working as cleaner he met with accident. Under IMP 28, the policy covered the risk for payment of premium of Rs.60/- for the paid driver and cleaner is within the meaning of Workmen Compensation Act and Section 167 of M.V.Act, option is there to the claimants to proceed under W.C Act or under the M.V Act. The policy admittedly covers the risk. It is not a case of owner entrusted to cleaner without driving licence even order pay and recovery. It is a case where vehicle entrusted to the driver by the owner, who in turn entrusted to the cleaner from which the cleaner met with death to say in the course of employment, his negligence to the cause of accident is immaterial as died in the course of employment as per the W.C. Act even. The age is even taken at 19 years the factor is 225.22, the earnings of the deceased to be taken as per the Apex Court's expression in **Kishan Gopal vs Lala** in the absence of proof of earnings Rs.30,000/- to be taken instead of Rs.15,000/- per annum. AS there is a proof from the G.O., which clearly mention the wages of drivers and cleaners prevailing as on the date of accident taken at Rs.2,645/- per month. From that

under W.C Act, 50% to be deducted towards personal expenses it comes to Rs.1,322/- per month. As the age of the petitioner is 35 years, for the age group 35-40, the suitable multiplier is '16', then the loss of dependency comes to Rs.2,53,824/- (Rs.1,322/- X 12 X 16), which is more than what the Tribunal awarded. Thereby, for this Court while sitting in appeal, on this ground also there is nothing to interfere and as there are no cross objections filed by the claimants.

4) Accordingly and in the result, the appeal is dismissed for no merits.

5) Consequently, miscellaneous petitions if any, pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.25.11.2015

knI

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

-
-
-
-
-
-
-
-
-
-
-

-

-

-

M.A.C.M.A. No.2832 of 2015

-

Date:25.11.2015

Knl