

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.2670 of 2015

JUDGMENT:

The claimant filed this appeal having been aggrieved by the Order/Award of the District Judge & Motor Accidents Claims Tribunal at Srikakulam, (for short, 'Tribunal') in M.V.O.P.No.418 of 2009 dated 01.11.2010, awarding compensation of Rs.1,90,000/-(Rupees One lakh ninety thousand only) with interest at 7.5% per annum against claim of Rs.5,00,000/-(Rupees five lakhs only) claimed in the claim petition filed under Section 166 of the Motor Vehicle Act, 1988 (for short, 'the Act').

2. Heard the appeal at request of both sides. It is the submitted by the learned counsel for appellant that respondents 1 and 2 are not necessary parties relying on ***Meka Chakra Rao vs Yelubandi Babu Rao*** as they remained *ex parte* before the Tribunal, no way fatal to the maintainability of the appeal and perused the material on record.

3. The award of the Tribunal out of the claim of Rs.5,00,000/- under Section 166 M.V Act in awarding Rs.1,90,000/- with interest at 7.5% per annum on 01.11.2010 in M.V.O.P. No.418 of 2009 by District Judge & MACT, Srikakulam is now impugning on the quantum.

4. It is the claim that the deceased used to earn Rs.5,500/- as per Ex.A7—salary certificate that while studying 2nd year MCA he was doing part time job in Vyshnavi Computers, Srikakulam. No doubt, in proof of that the deceased was studying 2nd year MCA, the claimant filed Ex.A6 besides Ex.A8, issued by the Principal, SISTAM College of Engineering, Srikakulam. The deceased was shown above 24 years and his younger brother, who is petitioner herein was shown as 19 years. He is not a sole dependant but for clause-ii legal heir thereby entitled to compensation but for to consider the fact that

he would be a dependant what is the contribution of the deceased to the claim petitioner as criteria as per settled law. There is no proof regarding the earnings, the so-called salary certificate is not believable as he is a full time student of SISTAM College of Engineering. Though as per Ex-A8 certificate, deceased is a student, as per the settled expression in ***Kishan Gopal and another vs Lala at page 257 para No.39*** as provided under Schedule-II Section 163 M.V Act with reference to income of deceased, it can be treated as Rs.30,000/- per annum instead of Rs.15,000/- per annum and if that is taken into consideration, half to be deducted towards personal expenses being bachelor, it comes to Rs.15,000/- per annum. As the petitioner a major, no other than brother and clause-ii legal heir not totally dependant, the contribution of the deceased to the petitioner was estimated at Rs.10,000/- per annum and adopted the multiplier '17', then the dependency comes to Rs.1,70,000/-. Apart from it, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of estate granted vide ***Rajesh vs Rajbir Singh***, in all it comes to Rs.2,15,000/-.

5. Accordingly the appeal is partly allowed enhancing the compensation from Rs.1,90,000/- (Rupees one lakh ninety thousand only) to Rs.2,15,000/- (Rupees two lakhs fifteen thousand only) with interest at 7.5% per annum from the date of petition till the date of realisation. No order as to costs.

6. Consequently, miscellaneous petitions, if any pending in this Appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

03.11.2015

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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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M.A.C.M.A. (SR) No.8893 of 2011

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