

HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A. No. 2145 of 2009

JUDGMENT:

1. The appellants/claimants, aggrieved by the Award and judgment dated 30.11.2007 passed in M.V.O.P.No.861 of 2005 by the learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-III Additional District Judge, Guntur, preferred present appeal raising several grounds besides on the ground that the Tribunal erred in taking contribution of the deceased at Rs.500/- per month to his family particularly in a claim under Section 163-A of the MV Act and it ought to have taken the income of the deceased at Rs.15000/- per month. Further that the deceased was working as driver on a truck and therefore the Tribunal ought to have taken monthly salary of the deceased at Rs.2500/- per month which amount was assessed by the Commissioner for Workmen's Compensation. The Tribunal also erred in awarding interest at 7.5% per annum on the compensation awarded and it should have allowed interest as claimed.

2. Despite service of notice, none appeared on behalf of the first respondent nor any representation is made on his behalf. The second respondent though engaged the counsel on its behalf, none appeared on its behalf to argue the matter when the case is

called on 27.01.2017, 03.03.2017, 17.03.2017, 07.04.2017 and 13.04.2017.

3. In a claim under Section 163-A of the M.V. Act, the appellants/claimants need not produce any evidence to prove rash and negligence. It is sufficient if the claimants could able to establish involvement of the offending vehicle and age, occupation and income of the deceased. The Tribunal having considered the oral and documentary evidence on record came to the conclusion that there is no dispute with regard to the fact that the deceased died in a motor vehicle accident involving the lorry bearing Registration No. AP 37 U 135 and the relationship between the appellants/claimants and the deceased. It is also an undisputed fact that the appellants/claimants are the parents of the deceased.

4. The evidence of P.W.1 who is no other than the father of the deceased clinches the issue that the deceased was married and his wife and daughter died subsequently. The only legal heirs of the deceased are the appellants/claimants herein. The wife of the deceased, during her life time, filed W.C.No.45 of 1999 and while pending the claim petition, she died. In view of the directions of the High Court in AAO.No.515 of 2002 under Ex. A.4, the appellants/claimants filed the present claim petition.

5. The Tribunal having considered the age of the deceased as 28 years, which was deposed by P.W.1 in his

evidence, and admission of P.W.1 during his cross examination that his son used to pay Rs.500/- per month towards their maintenance while living separately from him (the deceased), applied the multiplier '18', took the net contribution of the deceased at Rs.6000/- per annum and assessed the loss of contribution at Rs.1,08,000/-. The Tribunal also awarded Rs.15,000/- towards loss of estate, Rs.3,000/- towards funeral expenses, Rs.3,000/- towards transportation. Thus, in all, the Tribunal awarded Rs.1,29,000/- payable by the respondents 1 and 2. However, the Tribunal deducted Rs.1,07,115/- inasmuch as P.W.1 in his cross examination admitted that they have withdrawn the said amount, and after adjusting the withdrawal amount, awarded the balance amount of Rs.21,885/- along with interest at 7.5% per annum.

6. In the decision relied on by the learned Counsel for the appellants/claimants in the case of KISHAN GOPAL AND ANOTHER Vs. LALA AND OTHERS {(2014) 1 SCC 244}, it was held that it is just and reasonable to take notional income at Rs.30,000/- as the deceased was 10 years old who was assisting the parents in their agricultural operations. The said decision is clearly distinguishable on facts and therefore is of no way helpful to substantiate the contention of the appellants/claimants.

7. In the case on hand, the Tribunal rightly took the evidence of P.W.1 who deposed that the age of the deceased was

25 years as on the date of accident and used to pay Rs.500/- per month towards their maintenance, and, awarded compensation. There is no irregularity or illegality in the manner and method of awarding compensation by the Tribunal and it was purely based on the evidence of P.W.1 available on record. I do not see any legal infirmity in the award warranting interference by this Court.

8. For the foregoing discussion and in the result, the appeal fails and is accordingly dismissed confirming the Award and judgment dated 30.11.2007 passed in M.V.O.P.No.861 of 2005 by the learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-III Additional District Judge, Guntur.

9. Miscellaneous petitions pending consideration if any in the appeal shall stand closed in consequence. No order as to costs.

JUSTICE N. BALAYOGI

DATED 24th APRIL, 2017.
Msnr_x