

HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A.No. 2492 OF 2009.

JUDGMENT:

1. The appellant/claimant aggrieved by the Award dated 12.07.207 in O.P.No.404 of 2006 passed by the learned Chairman, Motor Accident Claims Tribunal-cum-IV Additional District Judge, (Fast Track Court), Karimangar preferred the present appeal besides on the other grounds that:

(a) Awarding of compensation of Rs.1,34,500/- against the claim of Rs.2,50,000/- is unjustified and contrary to the well settled principles of law.

(b) The Tribunal has not properly appreciated the oral and documentary evidence and erred in applying the multiplier '13' instead of '15' and also assessed the annual income of the deceased at Rs.15,000/-; and

(c) Further the Tribunal erred in not awarding compensation towards loss of love and affection and also future prospects of the deceased.

2. On the other hand, the respondents contended that there is no negligence on the part of the lorry driver and the accident occurred only on account of the negligence on the part of the deceased himself.

3. A perusal of the record goes to suggest that during the cross-examination of P.W.1, she stated that she was not the direct witness to the accident and only came to know the death of the deceased at 6.00 PM through one Venkati. P.W.2 was the direct witness to the accident. His evidence clinches the issue that at the time of accident, he was grazing the cattle in the out skirts of Bavupet village and at that time, while the deceased P. Sekhar crossing the road, the lorry came in high speed, in rash and negligent manner and dashed the said Sekhar. Ex. A1. is the FIR, Ex. A.2 is Inquest report, Ex.A.5 is the M.V.I. Report and Ex.6 is the charge sheet.

4. In the earliest report of Ex.A.1, there is a specific assertion that while P. Sekhar crossing the road at Satyanarayana Poultry, the lorry bearing No. APO 7711 came in high speed and rash and negligent manner, dashed the deceased. The Investigating Officer after thorough investigation filed the charge sheet under Ex. A.6 against the lorry driver APO 7711 finding that while the deceased was crossing the road at Satyanarayan Poultry in the outskirts of Bavupet, the driver of the lorry bearing No. APO 7711 came in high speed and rash and negligent manner, hit the deceased.

5. The Motor Vehicle Inspector who inspected the lorry issued Ex. A.5 wherein it was clearly stated that foot break and parking break are efficient and they are on even action and opined

that the accident occurred not due to the mechanical defect of the vehicle/lorry. The Inquestdars under Ex.A.2 also opined that the driver of the lorry APO 7711 came in rash and negligent manner and dashed the said Sekhar while he was crossing the road near Satyanarayana poultry.

6. The Tribunal after elaborate discussion of the evidence both oral and documentary and marshalling of facts came to the right conclusion that the respondents did not choose to produce any evidence to rebut the evidence of P.W.2. In the absence of any rebuttal evidence, the evidence of P.W.2 supported by documentary evidence at Exs. A.1, A.2, A.5 and A.6 well established that the accident was due to the rash and negligent driving of the lorry by its driver.

7. With regard to nature of occupation and quantum of compensation, there is the evidence of P.W.1 who is the claimant herein. Her unimpeachable evidence is that the deceased was the only son to her, who was aged about 12 years and she was aged about 45 years. The deceased was a student, studying 6th class at the time of accident.

8. In the case of *KISHAN GOPAL AND ANR Vs. LALA AND OTHERS* {(2014) 1 SCC 244} their Lordships observed in that case that the deceased was 10 years old and he was assisting the parents in agricultural operations, which was

undisputed. In view of the aforesaid reason, their Lordships held that it would be just and reasonable to take notional income at Rs.30,000/- and further taking young age of the parents, namely, mother, who was 36 years old at that time of accident by applying the legal principles laid down in *SARALA VARMA Vs. DELHI TRANSPORT COPORATION* {(2009) 6 SCC 121}, the multiplier '15' can be applied to the multiplicand.

9. In the case on hand, the deceased, as per the evidence of P.W.1, was aged 12 years and was a student of 6th class. P.W.1 who is no other than the mother of the deceased was aged 45 years and was house hold.

10. In view of the aforesaid reason that the deceased was 12 years old and was a student of 6th class by the date of death in the accident involving lorry bearing No. APO 7711 on 26.01.2006, and the age of the mother of the deceased at 45 years who was house hold, notional income of the mother can be taken at Rs.30,000/- per annum. Since the claimant is the mother and only one, relying on the decision of the Supreme Court in *SARALA VARMA Vs. DELHI TRANSPORT COPORATION* {(2009) 6 SCC 121}, 1/3rd of the income has to be deducted towards personal and living expenses of the deceased had he been lived. Accordingly, if 1/3rd of the income is deducted, contribution to the family would come to Rs.20,000/-per annum. By following the legal principles laid down in the case of *SARALA VARMA* (supra), the multiplier

'14' can be applied to the multiplicand. Thus, Rs.20,000/- x 14 =Rs.2,80,000/- would be the loss of contribution to family. Another Rs.50,000/- under conventional heads towards loss of love and affection, funeral expenses, last rites as held in the case of *KERALA STATE ROAD TRANSPORT CORPORATION Vs. SUSAMMA THOMAS* {(1994) 2 SCC 176} can be awarded. The said amount under the conventional heads is awarded even in relation to the death of children of 12 years age. Thus in total, the appellant/claimant is entitled to the compensation of Rs.3,30,000/-

11. Reliance can be placed on the legal principle laid down in the case of *ADAM INDUR MUTTEMMA Vs. RATHOD REDDIA* { 2015 (4) ALD 585 (LB)}, wherein their Lordships held from the evidence that the Tribunal can consider that the claimant is entitled to get more compensation than claimed and it may pass such order.

In the case on hand, by applying the legal principles laid down in *SARALA VERMA's* case (supra) and also the decision relied on by the appellant in *KISHAN GOPAL* (supra) and having considered the evidence brought on record, the claimant is entitled to receive just and reasonable compensation of Rs.3,30,000/-.

12. Accordingly the appeal is allowed with costs while setting aside the Award dated 12.07.2007 in O.P.No.404 of 2006

passed by the learned Chairman, Motor Accident Claims Tribunal-cum-IV Additional District Judge, (Fast Track Court), Karimangar and awarded a compensation of Rs.3,30,000/- with interest at 7.5% per annum from the date of claim petition i.e. 25.03.2006 till the date of deposit.

13. The respondents 1 to 3 are jointly and severally liable to pay the said amount and they shall deposit the said amount within 30 days from the date of this order.

14. On such deposit, the appellant/claimant is entitled to withdraw the same.

15. Advocate fee is fixed at Rs.2,000/-

16. Miscellaneous petitions pending consideration if any in the appeal shall stand closed in consequence.

JUSTICE N. BALAYOGI.

Date 24th March, 2017.
Msnrx