

HONOURABLE SRI JUSTICE N. BALAYOGI

M.A..C.M.A. No. 279 OF 2009

JUDGMENT:

1. The appellants/claimants aggrieved by the award dated 11.09.2008 passed in O.P.No.822 of 2004 by the Motor Accident Claims Tribunal-cum- learned VIII Additional District Judge, Nizambad preferred present appeal on the grounds that the Tribunal failed to consider the evidence of P.W.1 in proper perspective, that the Tribunal erred in taking income of the deceased at Rs.3,500/-per month, that the Tribunal ought to have granted Rs.50,000/- towards loss of love and affection instead of granting Rs.10,000/- and that the Tribunal ought to have granted interest at 24% per annum.

2. The case of appellants/Claimants in brief is that the deceased-Swarna Kondaiah met with motor vehicle accident on 6.3.2004 at about 6.30 AM due to the rash and negligent driving of lorry bearing Registration No. AP 25 T 0911 which was insured with the second respondent. The deceased was working as mason besides doing building contract works and used to earn Rs.15,000/- per month.

3. The main contention of the appellants/claimants is that the Tribunal erred in taking income of the deceased at Rs.3,500/- per month whereas, the respondents contend that in absence of any documentary evidence, the Tribunal correctly took

the monthly income of the deceased at Rs.3,500/- and no error was committed by the Tribunal.

4. The first appellant/first claimant, who is no other than the wife of the deceased was examined as P.W.1 besides examining an eye-witness to the accident as P.W.2. The evidence of P.Ws.1 and 2 substantiates that the deceased was hale and healthy as on the date of accident and was doing building contract works besides working as mason and used to earn Rs.15,000/- per month. It further substantiates that the deceased was aged about 28 years. The only suggestion put to P.Ws.1 and 2 was that the deceased was 45 years. To disprove and deny the age and occupation of the deceased, burden lies on the respondents to adduce rebuttal evidence. Absolutely there is no rebuttal evidence to the evidence of P.Ws.1 and 2. The first respondent who was the owner of the offending lorry bearing registration No. AP 25T0911, having received notice in the claim petition, failed to enter into the witness box and adduce evidence. More over, the second respondent-Insurer also did not choose to adduce any rebuttal evidence.

5. In fact the appellants/claimants also did not produce any oral or documentary evidence in proof of age, occupation and income of the deceased. However, in Ex. A.1-copy of FIR, Ex.A.2-Copy of charge sheet and Ex.A.3-Copy of Inquest Report, occupation of the deceased was noted as 'mastry'.

6. Therefore the evidence of P.W.1 which corroborates the evidence of P.W.2 and documentary evidence at Exs.A.1 to A.4 establish that the deceased -Swarna Kondaiah, as on the date of accident, was working as mason besides doing building contract works and the same was not rebutted by the respondents by adducing any oral or documentary evidence,. In the absence of any such rebuttal evidence to the evidence of P.Ws.1 and 2 and documentary evidence at Exs.A.1 to A.4, the Tribunal erred in coming to the conclusion that the deceased was working as mason only and there is no evidence that he was doing building contract works.

7. The Tribunal came to the conclusion that the deceased was mason, and, in the absence of rebuttal evidence to the evidence of P.W.1 that the deceased was also doing building contract works, the Tribunal could have assessed the income of the deceased at Rs.6,000/- per month.

8. Further the consistent evidence of P.Ws.1 and 2 is that the deceased was 28 years as on the date of accident and death. Whereas in the documentary evidence at Ex. A.1-FIR, Ex.A.2-Charge Sheet, Ex.A.3-Inquest Report and Ex. A.4-PME report, the age of the deceased-Swarna Kondaiah was mentioned as 30 years. In the absence of any rebuttal evidence, the Tribunal could have considered and believed the age of the deceased as mentioned in the aforesaid documents as 30 years.

9. With regard to the discrepancy in the policy, the Tribunal elaborately discussed about Exs.A.5 and A.6. Having considered the plea in the claim petition and evidence of P.Ws.1 and 2, the Tribunal came to the right conclusion that it is not known as to how and on what basis the Motor Vehicle Inspector mentioned the policy number in Ex.A.5 which was different from the policy number mentioned in Ex.A.6. The reason for such conclusion is that the respondents did not adduce any rebuttal evidence to prove that the Motor Vehicle Inspector mentioned policy number correctly, because, the vehicle that caused accident was different vehicle and finally came to conclusion that at any rate, on the face of Ex.A.6-Insurance Policy, the MVI report loses its significance in so far as the entry as to policy number is concerned and that Ex.A.6-Insurance Policy would amply prove that the offending vehicle was duly insured with the second respondent and the insurance was valid and in force as on the date of accident. The second respondent being the insurer of the offending lorry bearing registration number AP 25T0911 has to indemnify the liability of the first respondent. In view thereof, respondents 1 and 2 are jointly and severally liable to pay the compensation.

10. As already discussed hereinabove and finding recorded thereon, the deceased-Swarna Kondaiah was aged 30 years as on the date of accident and he was mason besides doing building contract works and used to earn Rs.6,000/- per month.

11. Since the deceased who was aged 30 years and was mason besides doing building contract works, is a skilled worker and in view of the imponderables and uncertainties, the appellants/claimants are entitled to an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects.

12. From the foregoing discussion, the annual income of the deceased would come to Rs.72,000/- (Rs.6,000/- x 12) and if an addition 50% of actual salary to the actual salary income is made, it would come to Rs.1,08,000/- (Rs.72,000/- + Rs.36,000/-). Since the deceased is having more than five family dependant members, as per the decision of the Apex Court in SARLA VERMA Vs DELHI TRANSPORT CORPORATION {2009 ACJ 1298} the deduction towards personal and living expenses of the deceased should be $\frac{1}{5}$ th and if the same is applied, the contribution to the family would come to Rs.86,400/- (Rs.1,08,000 - Rs.21,600/-).

13. Since the deceased was aged 30 years as on the date of accident, the appropriate multiplier as indicated in KERALA STATE TRANSPORT COMPANY Vs. SUSAMMA THOMAS {(1994)2 SCC 176}, U.P.S.R.T.C. Vs. TRILOK CHANDRA {(1996) 4 SCC 362}, NEW INDIA ASSURANCE Co.Ltd. Vs. CHARLIE {(2005) 10 SCC 720} is '17' and if the same

is applied, the loss of contribution would be Rs.14,68,800/- (Rs.86,400 x 17).

14. The compensation awarded by the Tribunal towards loss of love and affection at Rs.10,000/- is very meager. Having considered that appellants 2 to 4/claimants 2 to 4 are minors and they are deprived of love and affection due to the sudden death of their father, it is just and reasonable to award compensation of Rs.25,000/- towards loss of love and affection. The Tribunal awarded other amounts under the conventional heads, i.e. Rs.2000/- towards funeral expenses and Rs.5,000/- towards loss of consortium. The appellants/claimants have not challenged the aforesaid amounts. Accordingly, I find the compensation awarded by the Tribunal towards funeral expenses and loss of consortium is just and reasonable and therefore needs no enhancement.

15. Thus, in all, the appellants/claimants are entitled to receive total compensation of Rs.15,00,800/-, which is restricted to the claim made by the appellants/appellants at Rs.15,00,000/-.

16. In the result, the appeal is allowed with costs and the award dated 11.09.2008 passed in O.P.No.822 of 2004 by the Motor Accident Claims Tribunal-cum-VIII Additional District Judge, Nizambad, is modified to the extent indicated hereinabove.

17. Consequently, respondents 1 and 2 shall jointly and severally pay the compensation of Rs.15,00,000/- to the appellants/respondents, after deducting the amount if any already paid/deposited, with existing bank interest at 7.5% per annum from the date of petition, i.e. 19.06.2004 till date of deposit, within a period of thirty days from today.

18. Out of the aforesaid total compensation, Rs.7,00,000/- is apportioned to the first appellant/first claimant and she is permitted to withdraw Rs.4,00,000/- and the remaining her share of Rs.3,00,000/- shall be kept in FDR of any nationalized bank.

19. A sum of Rs.2,00,000/- each is apportioned to Appellants 2 to 4/Claimants 2 to 4 and as they being the minors, their share of Rs.6,00,000/- shall be deposited in any nationalized bank till they attain majority and interest accrued thereon can be permitted to be withdrawn for their genuine necessities.

20. Out of remaining Rs.2,00,000/-, Rs.1,00,000/- each is apportioned to Appellants 5 and 6/Claimants 5 and 6 and they are permitted to withdraw their share.

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

22. Miscellaneous petitions pending consideration if any
in the appeal stall stand closed in consequence.

JUSTICE N. BALAYOGI

DAT5ED ----- MARCH, 2017.
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