

HONOURABLE SRI JUSTICE N. BALAYOGI

M.A..C.M.A. Nos. 5463 of 2008 & 990 OF 2009

COMMON JUDGMENT:

1. The appellant-National Insurance Company Limited aggrieved by the common Award dated 15.06.2007 passed in O.P.Nos.1422 of 2004 and 2358 of 2006 respectively by the learned Chairman, Motor Accidents Claims Tribunal-cum-Chief Judge, City Civil Court, Hyderabad, preferred these appeals mainly on the grounds that the Tribunal failed to see that the deceased was not under the employment of M/s. Alacrity Electronics Limited as on the date of the accident, that the OPs are not maintainable as the OPs are dismissed against the first respondent therein and that the Award of the Tribunal is excessive and out of proportions.

2. Learned Counsel for the first and second respondents in both appeals contended that the Tribunal well considered both oral and documentary evidence and granted just compensation which does not suffer from any legal infirmities warranting interference by this Court.

3. The facts of the case in brief are that respondents 4 and 5 in MACMA No. 990 of 2009 and Respondents 1 and 2 in MACMA No. 5463 of 2008 are the wife and daughter of the deceased B. Mahesh Kumar, whereas Respondents 1 and 2 in MACMA No. 990 of 2009 and Respondents 4 and 5 in

MACMA.No.5463 of 2008 are the parents of the deceased, who died in the accident occurred on 5.3.2004 involving a SETWIN bus bearing No. ADT 8796.

4. The main contention of the appellant is that there is no proof that the deceased was working in M/s. Alacrity Electronics Limited and income derived by him.

5. Smt. B. Sushma, wife of the deceased was examined as P.W.1. There is no dispute about the rash and negligence of the driver and involving of the SETWIN bus bearing No. ADT 8796. The clinching evidence of P.W.1 is that her husband used to work as Stabilizer Repairer & Electrical Mechanic and earn an income of Rs.5,000/- per month and contributing the same to family. He was 27 years as on the date of the accident.

6. The father of the deceased was examined as P.W.2 whose evidence is that his deceased son was 32 years and used to earn Rs.6,500/- per month working as Administrative Officer in M/s. Alacrity Electronics Limited.

7. During the cross examination, P.W.1 stated that her deceased husband studied graduation prior to his marriage and he was working as Stabilizer repairer, but admits that she has no documents to show her husband's income and also proof of age of her husband. P.W.1 was cross examined by the parents of the deceased and for their questions, she stated that she did not know

about the Provident Fund amount of Rs.1,10,000/-. Similarly P.W.2 was cross examined at length, but could not elicit any favourable information. P.W.2 admits that in Ex. A.1-FIR and Ex. A.9-Bank Pass book income of the deceased was not disclosed.

8. Admittedly Exs. A.10 and A.11, Pay Slip and Pay Certificate could not pertain to the year 2004. The only suggestion put to P.W.2 is that Ex. B.1, and Exs. A. 8 to 12 are created for the purpose of this case.

9. Though the appellant disputed the occupation and income of the deceased, it did not choose to enter into the witness box and depose the facts to its knowledge.

10. The Tribunal having considered both oral and documentary evidence on record, came to the conclusion that admittedly there is no clinching evidence regarding the age of the deceased. In Exs. A.3, A.6 and A.7, the age of the deceased was noted as 30 years as on the date of his death. Accordingly the Tribunal considered the age of the deceased as 30 years as on the date of his death.

11. In proof of income of the deceased, the claimants marked Ex. A.10, according to which, the salary of the deceased was Rs.5213/- and net salary was Rs.4,808/-. The only deduction from the salary shown is Provident Fund.

12. Exs. A.8 and A.9, pass books, which are in the name of the deceased shows transactions of the deceased and Ex. A.10 pay slip which show gross salary at Rs.5213/- and net salary at Rs.4808/-. Ex. A.11 is the Pay Certificate which shows that the deceased was working as Officer-Administration in M/s. Alacrity Electronics Limited with effect from 01.01.2002 and his monthly salary as Rs.3,900/-, House Rent Allowance as Rs.390/-, Length of Service allowance per month at Rs.1000/- and Leave Travel Assistance per annum as Rs.325/-. In all, the monthly salary of the deceased comes to Rs.5615/-. Ex. A.12 is the internal Memo issued to the deceased posting him at Kalyan office with effect from 22.07.1996.

13. Ex.B.1 is the memo issued by the M/s. Alacrity Electronics Limited informing that the deceased was eligible for Provident Fund. Therefore the Tribunal well considered the evidence of P.Ws. 1 and 2 and came to the conclusion that the monthly salary of the deceased was Rs.4,808/- and he was 30 years as on the date of his death and applied the multiplier '17' as per the decisions of the Apex Court 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.

14. The appellant filed a copy of G.O.Ms.No.73, Labour, Employment, Training and Factories (Lab.II) Dated 29.11.2000,

which came into force with effect from 29.03.2001, according to which, the salary of the electrician was Rs.4473.50 per month. But whereas the Tribunal relying on Exs. A.8 to 12 considered that the deceased was working as Officer-Administration and his monthly salary was Rs.4,808 and the Tribunal rightly applied the multiplier '17' and awarded the total compensation of Rs.6,86,000/-. Accordingly the findings of the Tribunal in considering the age, occupation and income of the deceased and awarding of the compensation at Rs.6,00,000/- (in OP.No.1422 of 2004) and Rs.86,000/- (in OP.No.2358 of 2006) is legal and valid.

15. For the foregoing discussion and in the result, I am of the considered opinion that the Awards of the Tribunal are valid and legal and do not suffer from any legal infirmities warranting interfere by this Court.

16. The Appeals fail and is accordingly dismissed while confirming the Awards and decrees dated 15.06.2007 passed in O.P.Nos. 1422 of 2004 for Rs.6,00,000/- and 2358 of 2006 for Rs.86,000/-respectively by the learned Chairman, Motor Accidents claims Tribunal-cum-Chief Judge, City Civil Court, Hyderabad.

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

JUSTICE N. BALAYOGI

DAT5ED -----April,2017
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