

HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A. No. 1640 of 2009

JUDGMENT:

1. The appellants/claimants, aggrieved by the Award and decree dated 16.04.2007 passed in M.V.O.P.No.462 of 2006 by the learned Chairman, Motor Vehicle Accidents Claims Tribunal-cum-II Additional District Judge, Parvathipuram, Vizianagaram District preferred this appeal on the grounds that the Tribunal failed to grant proper compensation by taking into consideration the fact that the deceased was working as mason with daily income of Rs.150/- and that it applied improper multiplier in assessing the compensation. Further that no proper amount was awarded towards loss of love and affection, loss of estate and also future prospectus.

2. On the other hand, learned Counsel for the third respondent contended that the Tribunal having considered the age, income and occupation of the deceased rightly awarded compensation which does not warrant interference by this Court.

3. None appeared for the second respondent despite sufficient time granted.

4. First appellant/claimant is the wife and second and third appellants/claimants are the children of the deceased, Prasad Naidu. On 02.03.2006, the said Prasad Naidu met with an

accident near Chilkam village junction at about 12.40 PM involving the lorry bearing registration No.OR.02.E.1951. There is no dispute with regarding to the involving of offending lorry bearing No. OR.02.E.1951 and driving of the said vehicle by its driver in rash and negligent manner and dashing of the deceased and another, Srinivasa Rao while they were standing on the extreme left side of the road. As a result of the hit by the offending lorry, Prasad Naidu succumbed to injuries on the spot.

5. There is no rebuttal evidence adduced by the respondents, particularly Respondent No.3 having taken plea that the driver of the offending lorry does not possess valid and effective driving license and that the accident occurred due to negligence of the deceased himself. In those circumstances, the Tribunal having considered the evidence of P.W.1 who is no other than the wife of the deceased and evidence of eye witness, who was examined as P.W.2, which clinches the issue, held that while the deceased Prasad Naidu and another were standing far left side of the road, the driver of the offending lorry drove in rash and negligent manner and dashed the standing deceased and another.

6. The respondents having taken plea that there is no negligence on the part of the driver of the lorry and the driver did not possess valid driving license, did not choose to enter into the witness box to speak in regard thereof and thereby the Tribunal

correctly drawn an inference that the respondents failed to establish that the driver of the offending vehicle did not possess valid and effective driving license as on the date of the accident. Based on the documentary evidence at Ex. A.4--Charge sheet, Ex. A.1--FIR, Ex.A.3--Motor Vehicle Inspector's Report supported by oral evidence of P.W.2, the Tribunal rightly came to the conclusion that the accident occurred due to the rash and negligent driving of the offending lorry bearing No. OR.02E.1951 by its driver. Such finding is not questioned by the Insurance Company by filing appeal or Cross Appeal and hence the same has become final.

7. P.W.1 is no other than the wife of the deceased--Prasad Naidu. Her clinching evidence is that before death of her husband, he used to work as Mason and earn Rs.150/- per day. She herself and appellants 2 and 3/claimants 2 and 3 were totally depending on the earnings of the deceased. As on the date of death, the deceased was aged 33 years. The only cross examination of P.W.1 was that her husband was not mason, but an agricultural coolie and not earning Rs.150/- per day. No rebuttal evidence was adduced by the respondents to the evidence of P.W.1.

8. Admittedly no documentary evidence was produced by the appellants/claimants showing age, occupation and income of the deceased. In the absence of any such evidence, having taken into consideration the cost of living and minimum wages as on the date of death of the deceased, and having considered the evidence of P.W.1 that her husband was aged 33 years as on the date of death and used to earn Rs.150/-, and there being no rebuttal evidence from the side of respondents, the income of the deceased can be taken at Rs.100/- per day and the age of the deceased as 33 years as on the date of the accident and working as Mason. However, though there is no rebuttal evidence and the claim being laid under Section 166 of the MV Act, the Tribunal erred in taking the income of the deceased only at Rs.15000/- per annum, which is unjust and improper and therefore the award of the Tribunal is required to be interfered with. Having considered the evidence on record, I took the age of the deceased at 33 years and his monthly income at Rs.3000/- as he was working as mason.

9. There are three dependants in the claim petition. Therefore  $\frac{1}{3}^{\text{rd}}$  has to be deducted towards the personal living expenses of the deceased had he been alive as per the decision of the Apex Court in *Sarla Verma and others v. Delhi Transport Corporation and another* (2009 ACJ 1298). Thus, the loss of contribution to the family of the deceased would come to

Rs.2000/- per month or Rs.24000/- per annum. The relevant multiplier applicable for the age of 33 years of the deceased 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 is '16'. If the same is applied, the loss of dependency would come to Rs.24000/- x 16 = Rs.3,84,000/-. Besides the same, Rs.15,000/- towards loss of consortium taking into consideration the age of P.W.1 as 28 years, Rs.5,000/- towards loss of estate, Rs.5,000/- towards funeral expenses and Rs.8,000/- towards loss of love and affection to the second appellant/claimant is awarded in just and proper manner. In all, Rs.4,17,000/- is awarded to the appellants/claimants, which is restricted to Rs.4,00,000/- as claimed by the appellants/claimants.

10. For the foregoing discussion and in the result, the appeal is allowed with costs while setting aside/modifying the Award and decree dated 16.04.2007 passed in M.V.O.P.No. 462 of 2006 by the learned Chairman, Motor Vehicle Accidents Claims Tribunal-cum-II Additional District Judge, Parvathipuram, Vizianagaram District and compensation of Rs.4,00,000/- is hereby awarded to the appellants/claimants with interest at 7.5% per annum from the date of the claim petition i.e. 05.05.2006 till

the date of deposit of the amount, excluding the interest on the amount if any already deposited from the date of such deposit.

11. By virtue of insurance policy Ex.B.1, respondents 2 and 3 are liable to pay the compensation amount awarded hereinabove, within thirty days from today, after deducting the amount if any already paid/deposited.

12. Out of the total compensation amount of Rs.4,00,000/-, a sum of Rs.2,00,000/- is apportioned to the first appellant/claimant and Rs.1,00,000/- each is apportioned to the first and second appellants/claimants.

13. The first appellant/claimant is permitted to withdraw Rs.1,00,000/- out of the amount apportioned to her and the remaining amount shall be kept in fixed deposit of any nationalized bank.

14. Since second and third appellants/claimants being minors, their share shall be kept in fixed deposit of any nationalized bank till they attain the age of majority.

15. After attaining the age of majority, the second and third appellants/claimants can make an application for withdrawal of their share according to their need and necessity

16. Advocate fee is fixed at Rs.2,000/-.
17. Miscellaneous petitions pending consideration if any in the appeal shall stand closed in consequence.

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***JUSTICE N. BALAYOGI***

DATED 28<sup>th</sup> APRIL, 2017.  
Msnr<sub>x</sub>

