HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.M.A.No.1134 OF 2004

JUDGMENT:

The claimants 7 viz; two wives, children and mother of the deceased filed the claim in O.P.No.1112 of 1999 under Section 166 of the Motor Vehicle Act,1988 *(for short, 'the Act')* on the file of the learned Chairman of the Motor Accidents Claims Tribunal-cum-District Judge, Nalgonda(*for short, 'Tribunal'),* for the claim of Rs.4,00,000/- against the owner and Insurer of the milk tanker bearing No.HR-12-1814, impugning the award dated 21.11.2002 of the tribunal granting compensation of Rs.1,05,000/- with interest at 9%p.a. with joint liability; preferred the appeal with the contentions in the grounds of appeal as well as submissions of the learned counsel for the appellants during the course of hearing, that the compensation is utterly low and unjust, that the tribunal gravely erred in not considering the proper income of the deceased and arrived wrong multiplicand by taking wrong multiplier hence, to set aside the award of the tribunal by allowing the appeal by granting the compensation as prayed for.

2. Whereas, it is the contention of the learned counsel for the contesting 2nd respondent-Insurer of the claim petition that the award of the tribunal holds good and for this Court while sitting in appeal there is nothing to interfere, hence to dismiss the appeal.

3. Perused the material on record. The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in the appeal.

4. *Now the points that arise for consideration in the appeal are:*

1. *Whether the compensation awarded by the Tribunal is unjust and utterly low and requires interference by this Court while sitting in appeal against the award, if so, with what compensation, what rate of interest and with what observations?*

2. *To what result?*

POINT-1:

5. There is no dispute as to the manner of the accident. Ex.A.3 post mortem

report also shows two persons proceeded on the motor cycle were crushed under the wheels of the milk tanker belongs to the 1st respondent insured with the 2nd respondent but for on the quantum of compensation. Now coming to the quantum of compensation, among the 7 claimants there are two major sons not dependents and two persons shown as wives of the deceased and there is nothing who among them or both are residing with him and dependant on the deceased even as per the expression of the Apex Court in **Sarla Verma v. Delhi Transport Corporation** where the dependants are more than three and upto 6, 1/4th of the monthly earnings is deducted towards personal expenses and if that is taken, in this case for among the 7 appellants only 4 or 5 are the dependants as two sons are majors not dependants but for at best for sufferance from the death of their father. Coming to the earnings of the deceased, according to the claim petition the deceased was an agriculturist owning lands and cultivating personally. Thus, what the loss suffered from death of the deceased is only supervisory loss of the said cultivation of the own land as land is succeeded by the claimants. The supervisory loss to assess is from Ex.A.6 pahani the deceased and his brother owning jointly Ac.2.75 cents of dry land to say deceased was having half share therein even therefrom the supervisory loss is only for that half share out of Ac.2.25cents but nothing more. The accident was dated 21.02.1996. It is the contention of the learned counsel for the appellants that as per guideline the expression of Apex Court in **Latha Wadhwa vs. State of Bihar** that even there is no proof of income and earnings, it can be reasonably estimated at Rs.3,000/- p.m. for any non-earning member and even for housewife as domestic contribution and the same to be taken, the accident is more than 5 years prior to the said expression even therefrom Rs.2,000/- is taken and 1/4th deducted, it comes Rs.1,500/- per month x 12 x 13(multiplier) as deceased is more than 45 years, it comes to Rs.2,34,000/-+ Rs.1,00,000/- towards loss of Consortium to the wife of the deceased, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of estate in all comes to Rs.3,69,000/- is the just compensation for which the claimants are entitled however with interest at 7.5% as the 9% is excessive as per the settled expressions of Apex Court in **TN Transport Corporation v. Raja Priya,** and **Rajesh** (supra)**,** in which it is held that the steep fall in the bank interest rate for the past several years which is to be kept in mind while awarding interest and awarded therefrom at 7.5% p.a. as reasonable. The appellate Court also got the discretionary power under Order LXI Rule 33 C.P.C to award reasonable rate of interest from the drastic fall in bank rate of interest in bank rate as laid down by the Apex Court in

DDA Vs. Joginder S. Monga. Accordingly, point No.1 is answered.

POINT No-2:

6. In the result, the appeal is partly allowed by enhancing the compensation from Rs.1,05,000/- to Rs.3,69,000/-by reducing the rate of interest from 9% to 7.5% p.a. from date of the claim petition till realization/deposit with notice. The respondents are directed to deposit the amount, within one month from the date of receipt of judgment. Failing which the claimants can execute and recover. On such deposit or execution and recovery, the claimants are permitted to withdraw the same. There is no order as to costs in the appeal. Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 02.04.2015

Vvr