

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.M.A.No.2399 OF 2004

JUDGMENT:

The claimants 3 in number no other than the wife, major son and minor son(declared as major as per Court order dated 27.07.2004, in C.M.A.No.12511 of 2004) of the deceased by name Syed Hussain who maintained O.P.No.289 of 2000 on the file of the learned Chairman of the Motor Accidents Claims Tribunal–cum-Addl. District Judge, Nizamabad,(for short, 'Tribunal'), under Section 166 of the Motor Vehicle Act,1988 (for short, 'the Act'), against the owner and insurer of the crime lorry bearing No. AP11-U-2319 belongs to the 1st respondent insured with the 2nd respondent covered by Ex.A.5=B.1 policy for the claim of Rs.3,00,000/- (Rupees three lakhs only) on the spot death of the deceased in the motor accident while proceeding on cycle caused by crime lorry due to the rash and negligent act of the driver, since granted Rs.1,55,900/- with interest at 9%p.a. fixing joint liability against both the respondents, aggrieved by the award dated 25.03.2003, preferred the appeal with the contentions in the grounds of appeal as well as submissions during the course of hearing that the compensation awarded by the tribunal is utterly low and unjust despite the deceased was a mason earning more than Rs.6,000/- p.m. as per the evidence on record, hence to set aside the award and grant compensation as prayed for by allowing the appeal.

2. Whereas, it is the contention of the learned counsel for the 2nd respondent-Insurer(since 1st respondent expired) that the award of the tribunal holds good and requires no interference by this Court while sitting in appeal, 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 as well as rate of interest awarded by the tribunal is utterly low and unjust and the same is unsustainable and requires interference by this Court while sitting in appeal, if so, with what compensation and what observations?*

2. To what result?

Point No.1:

5. There is no dispute as to the manner of the accident but for the quantum of compensation. The deceased even as a mason at the time of accident, dated 14.11.1999, taken his earnings at Rs.2,700/- per month as per the expression of the Apex Court in **Latha Wadhwa vs. State of Bihar** in which it is taken Rs.3,000/- p.m. even there is no proof of income and earnings for any non-earning member and even for housewife as domestic contribution and even $\frac{1}{3}^{\text{rd}}$ deducted towards personal expenses, it comes to Rs.1800/- x 12 x 15 (multiplier) from the age between the 36 to 40 as per the expression of Apex Court in **Sarla Verma v. Delhi Transport Corporation**, it comes to Rs.3,24,000/-, apart from that even Rs.1,00,000/- towards consortium to the wife-1st claimant, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of estate, it comes to Rs.4,59,000/-, hence, the claimants are entitled for the compensation as prayed for, however, by reducing the rate of interest from 9% p.a. to 7.5% as per settled expressions in **TN Transport Corporation v. Raja Priya**, and **Rajesh** (supra), as 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.1,55,900/- to Rs.3,00,000/- (as prayed for) but by reducing the rate of interest from 9% to 7.5% p.a. from the date of petition (MVOP) till realization/deposit with notice. The respondent No.2-insurer (since claim against 1st respondent is abated) is 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. Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 10.04.2015

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