HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.3841 of 2004 and
CROSS OBJECTIONS (SR) No.61228 of 2004

COMMON JUDGMENT :

The claimants in O.P. No.124 of 1999 who are no other than mother wife and two minor children of the deceased by name Nagoor Meera who met with death in the motor accident dated 03.05.1998 at about 3.00 A.M (in the early hours), maintain the claim against the State Express Transport Corporation (T.N.Division No.1) represented by its Managing Director, under Section 166 of the M.V.Act claiming Rs.12,00,000/- and on contest and from the evidence on record of second claimant wife of the deceased as P.W-1 and two more witnesses as P.Ws 2 and 3 with reference to Ex.A-1 to A-19 and from the evidence of conductor of bus R.W-1 awarded a compensation of Rs.6,39,000/- with interest at 9% p.a. by award dated 07.10.2003. It is pending the appeal, the claimants maintained cross-objections.

2) The contentions in the grounds of appeal maintained by the Managing Director of S.E.T.C Limited replied the Tribunal gravely erred in awarding in such an exhorbitant sum of compensation by arriving a wrong multiplier and also taken the earnings of the deceased at a high sum that resulted wrong multiplicand and also failed to consider the contentions raised in the counter as well as evidence of R.W.1 and hence to set aside the award of the Tribunal by allowing the appeal.

3) Whereas, the contention in the cross-objections by the claimants are that the said amount arrived is unjust and utterly low and the Tribunal also went wrong in not taking the earnings of the deceased even proved of owning a shop as its proprietor with its earnings at Rs.15,000/- per month and thereby allow the cross-

objections by awarding the compensation as prayed for before the Tribunal.

4) The learned counsel for the Corporation as well as the claimants in the appeal as well as in the cross objections respectively reiterated the submissions.

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

6) Now the common points that arise for consideration in the appeal as well as cross objections are:

1. *What is the just compensation in the factual matrix to say what was awarded by the Tribunal is excessive or utterly low including the rate of interest and with what observations*

2. *To what result?*

<u>POINT No.1:</u>

7) So far as the manner of accident is concerned, the findings of the Tribunal are just and no way requires interference including from the evidence of P.W-2, the eye witness with reference to Exs.A-3 F.I.R, A-4 post mortem report, Ex.A-5 M.V.I. Report, Ex.A-6 scene observation report and Ex.A-7 charge sheet with its translations.

8) As per the evidence of P.W-3-Abdul Khadar, no other than the elder brother of the deceased, the deceased was having A.P.G.S.T licence for doing business covered by Exs.A-2 and A-18 zerox copy and he was an income tax assessee also as per Exs.A-1 to A-12, A-15 and he received notice from Deputy Commercial Tax Officer, Nellore assessing the tax of Rs.16,192/- for year ending 31.03.1999. The accident was dated 03.05.1998. The said Ex.A-19 is post-liti document. There are no any account books produced for claiming the business income of the Rs.15,000/- per month as on the date of his

death. The tribunal rightly observed regarding the income tax returns that the accused has shown as if he was drawing salary of Rs.12,000/- per month for the so called business besides alleged net profit from said business of Rs.60,000/- without any basis. It is further observed by the tribunal from the evidence of P.Ws 1 to 3 so far as the rents from the shops concerned, there is nothing loss from his death to the estate of the deceased. Thereby, taken as just the average earnings of the deceased that suffered loss by the claimants at Rs.6,000/- per month. The learned counsel for the cross-objectors claimants contend that prospective earnings are also required to be taken into consideration atleast from said Rs.6,000/- arrived by the tribunal by placed reliance upon **Rajesh v. Rajbir Singh**[1]**.** In fact, the principle laid down in the expression is not only for salaried employees but also for fixed wage earnings and self-employed with fixed earnings, prospects the future prospective income can be considered. Even there is no basis in this case to take prospective earnings muchless 30% from his age about 41 years as on the date of accident including as per Ex.A-13 school record sheet as arrived by the tribunal, as per ***Rajesh*** supra referring to **Sarla Varma v. Delhi Transport Corporation**[2] the multiplier applicable is 14. The dependants are 4 in number, no other than mother, wife and two minor children and thus 1/4th to be deducted towards personal expenses as per ***Rajesh*** and ***Sarla Verma*** supra and not 1/3rd as taken by the Tribunal. Thus, there from it comes to Rs.7,56,000/- (Rs.6000 x 12 x ¾ x 14). Apart from it, as per ***Rajesh*** supra an amount of Rs.1,00,000/- towards loss of consortium to the 1st claimant and Rs.25,000/- towards funereal expenses, Rs.10,000/- towards loss of estate and Rs.10,000/- each towards care and guidance to the two minor children which comes to Rs.9,11,000/- is the just compensation to the claimants to enhance from Rs.6,39,000/-. Though the rate of interest awarded at 9% p.a. by the Tribunal, is no way reasonable, thus to reduce from ***Rajesh*** supra to 7.5% p.a. Accordingly, point No.1 is answered.

POINT No.2:

9) In the result, the appeal is dismissed. The cross-objections are allowed in part by enhancing the compensation from Rs.6,39,000/- to Rs.9,11,000/- towards the compensation to the claimants and by reducing the rate of interest from 9% to 7.5% p.a. from the date of claim petition till the date of realization. No order as to costs.

10) Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 23-01-2015
ksh

[1] 2013(4)ALT 35(SC)
[2] 2009 ACJ 1298