HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.503 OF 2012

JUDGMENT:

This appeal is preferred by the claimants who are the wife and minor daughter of the deceased by name M.D.Munvar Hussain, in O.P.No.1375 of 2006 on the file of the learned Chairman of the Motor Accidents Claims Tribunal–cum-II Addl. Chief Judge, City Civil Court, Hyderabad, (*for short, 'Tribunal')*, filed under Section 166 of the Motor Vehicle Act,1988 *(for short, 'the Act')*, against the two respondents owner and insurer of the crime vehicle (lorry) bearing No.AP-12U-7752 for the claim of Rs.6,00,000/- and awarded in toto with interest at 7.5% p.a. fixing joint liability against R.1 and R.2, aggrieved by the said quantum, preferred this appeal with the contentions in the grounds of appeal that though the tribunal held that the claimants are entitled for Rs.7,89,360/- but restricted to Rs.6,00,000/- only as per claim and the tribunal cannot deny just compensation as held in several expression by the Apex Court, and seeks to award the compensation of Rs.10,22,000/- as per the factual matrix.

2. Notice to R.1 and R.2 not yet returned is the registry endorsement. Now Sri A.Ravishankar Jandhyala, Standing counsel for the Insurance Company offers to file vakalath for R.2. R.1 remained exparte before the tribunal and as per the submission of appellant, not a necessary party to the appeal recorded from the expression of the Apex Court in **M.Chakra Rao v. Y.Baburao**[1] and heard the learned counsel for the claimants and perused the material on record.

3. It is the contention of the learned counsel for the appellants/claimants that the tribunal having arrived Rs.7,89,360/- should have been awarded as prayed for instead of restricting to Rs.6,00,000/- and the same is unsustainable and thereby to allow

the appeal and also to consider the conventional sums entitled as per **Rajesh v. Rajbir Singh**[2].

4. Whereas, it is the submission of the learned counsel for the Insurer that for taking Rs.6,500/-p.m. as salary of the deceased from the so called diploma certificate of the deceased and so called Ex.A.8 salary certificate as working under P.W.2 doctor G.Somaraju, with graduate in Bachelor of Medicine and Surgery in Homoeopathy, there is no basis and Ex.A.7 study certificate shows he did not even complete his high school study to believe any diploma and said so called income tax returns of the P.W.2 even to place reliance, no record showing any salary paid but for income tax showing total of Rs.90,000/- as salaries, it is not even deposed by P.W.2 as to how many employees that are working under him with names to correlate to the so called salary of Rs.6,500/- said as paid to the deceased. As per expression of Apex Court in **Latha Wadhwa vs. State of Bihar**[3] 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 and if the same is taken and multiplier to be adopted besides conventional sums, the increase cannot be more than what tribunal awarded of Rs.6lakhs therefrom the same is just compensation and thereby appeal liable to be dismissed.

5. In fact, a perusal of the evidence of P.W.2 discussed in para-5(ii) of the tribunal with reference to the Exs.A.6 to A.8 and X.2 income tax returns which show there is no specific details of Rs.90,000/- and how many employees working under his control but for so called Ex.A.8 salary certificate, there is no proof from the accounts of the P.W.2 thereby once the deceased did not complete, as per Ex.A.7 study certificate, even 10th class to

believe, Ex.A.6 diploma certificate cannot be believed therefrom the tribunal taking salary of Rs.6,500/- p.m. is exorbitant with no basis.

6. Having regard to the above, even from Latha Wadhwa supra with prospective increase in earnings, Rs.4,000/-p.m. taken and 1/3rd is deducted towards personal expenses, and multiplier 16 applies for the claim under Section 166 of the M.V.Act, Rajesh supra, it comes to Rs.5,12,000/- in addition to one lakh towards consortium, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of estate, Rs.20,000/- towards care and guidance to the only minor, in all it comes to Rs.6,67,000/- with interest at 7.5% p.a. which is just and reasonable compensation to award as per the factual matrix.

7. Accordingly, the appeal is partly allowed enhancing the compensation from Rs.6,00,000/- awarded by the tribunal to Rs.6,67,000/- confirming the rate of interest at 7.5%p.a. The claimants are directed to pay deficit Court fee for Rs.67,000/- under Rule 475 of the A.P.M.V. Rules within one month and without payment of the deficit court fee, appellants cannot execute the same. There is no order as to costs.

Dr. B. SIVA SANKARA RAO, J

Date: 07-11-2015
Vvr

---

[1] 2001 (1) ALT 495 DB

[2] 2013 ACJ 1403=(4)ALT-35(SC).

[3] (2001) 8 SCC 197=AIR 2001 (SC) 3218