THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

C.M.A No. 4037 of 2004

ORDER:

The claimants 1 to 5, no other than wife, major son, major married daughter and parents of the deceased Upender, aged about 45 years, as per Ex.A4—post mortem report, maintained the appeal, aggrieved by the order/award dated 25.07.2002 in M.V.O.P.No.302 of 1999 on the file of Motor Accidents Claims Tribunal–cum-District Judge, at Nalgonda (*for short, 'Tribunal')* awarding compensation of Rs.5,05,000/- with interest at 7.5% p.a. against the claim of Rs.10,00,000/- in the claim petition under Section 166 of the Motor Vehicle Act, 1988 *(for short, 'the Act')*.

2. Heard learned counsel for claimants and learned standing counsel for the Insurance Company. Perused the material on record. The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in the appeal.

3. The contentions in the grounds of appeal as well as the oral submission of the learned counsel for claimants/ appellants that the award of the Tribunal is contrary to law and Tribunal gravely erred in not considering the income of the deceased to minimum of Rs.10,000/- per month and the multiplicand arrived by the tribunal is also low, hence to enhance the compensation as claimed with all other conventional sums as entitled.

4. Whereas it is the contention of the learned counsel for the insurer that the compensation awarded no way requires interference but for interest awarded by the Tribunal at 9% per annum, is highly excessive and exorbitant, to reduce within the discretionary power of the Court under Section 171 M.V Act, to 7.5% per annum, if not, also to fix contributory negligence and hence to dismiss the appeal while reducing rate of interest.

5. Now the points that arise for consideration in the appeal is:

1. Whether the compensation awarded by the Tribunal is utterly low

and requires interference by this Court while sitting in appeal against the award and, if so, with what enhancement to arrive at just compensation and with what rate of interest?

2. ***To what result?***

Point:

6. The fact that the accident occurred on 01.09.1998 while the deceased was travelling with others in Ambassador car bearing No.AP 24 U 1119 from Hyderabad to Suryapet and when the said car reached near Tekumatla bridge, the lorry bearing No.ABK 7547 came in a rash and negligent manner and dashed the car, as a result, the deceased and two others were succumbed to injuries is proved from the evidence on record as concluded by the Tribunal with reference to Exs.A1 to A15 of which Ex.A1 to A6 are FIR, Charge sheet, MVI report, Post Mortem report, Inquest panchanama and judgment in CC No.459 of 1998, coupled with PW.2 evidence, and thus there is nothing to fix any contributory negligence of the car driver while sitting in appeal.

7. Now coming to quantum of compensation and rate of interest, the deceased was aged about 45 years as per Ex.A4-post mortem report, the multiplier applicable as per ***Sarla Verma vs Delhi Transport Corporation***[1], is '14' but the Tribunal wrongly taken as '10' which is required to be enhanced. So far as the earnings of the deceased concerned, no account books were filed much less any other record regarding money lending business or rice mill business or working as Manager in a mill, but for the post liti income tax returns under Ex.A7 and not even any pre liti income tax returns i.e., the documents pertaining to income of deceased earlier to the accident. Regarding the so called business under Ex.A12—licence dated 16.09.1997 and Ex.A11—registration certificate and Exs.A14 & 15—certificates, which are not with any sufficient evidence to the claim of earning Rs.10,000/- per month. Thus, the Tribunal was right in arriving at just assessment of the earnings of the deceased at Rs.5,000/- per annum.

Thus, for this Court while sitting in appeal from the evidence, there is nothing to increase the annual income of the deceased above Rs.60,000/-

per annum.

8. From that the claimants are though five in number as per Sarla Verma (surpa) at para Nos.29 to 32, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members are 2 to 3, one-fourth (1/4th) where the number of dependant family members are 4 to 6, and one-fifth (1/5th) where the number of dependant family members exceed six. Here the 2nd claimant is a major son, 3rd claimant is a married daughter, they are no way dependents but for at best sufferers as per the settled law. The 4th claimant admittedly died pending appeal and other claimants are representing his estate. Thus, there are only three dependents among the claimants as per Sarla Verma (supra), the personal expenses reduction of deceased can be taken at 1/3rd, if 1/3rd deducted towards personal expenses from his annual income of Rs.60,000/-, it comes to Rs.40,000/- per annum and as the multiplier applicable is '14', the total comes to Rs.5,60,000/-. Apart from that Rs.1,00,000/- towards loss of consortium, Rs.25,000/- towards personal expenses and Rs.10,000/- towards loss of estate, in all it comes to Rs.6,95,000/- is the just compensation. Coming to rate of interest, the Tribunal awarded at 9% per annum which is excessive, hence to reduce from 9% per annum to 7.5% per annum vide decisions in ***TN Transport Vs. Raja Priya***[2]***,*** **Rajesh Vs. Rajbir Singh**[3] **and** ***DDA Vs. Joginder S. Monga***[4]. Accordingly, pont-1 is answered.

Point No.2:

9. In the result the appeal is partly allowed by enhancing the compensation from Rs.5,05,000/- (Rupees five lakhs five thousand only) to Rs.6,95,000/- (Rupees six lakhs ninety five thousand only) and by reducing the rate of interest from 9% per annum to 7.5% per annum from the date of claim petition till realisation. The claimants can approach the Tribunal for fresh apportionment and any permission for withdrawal of amount. The

respondents are directed to deposit the compensation amount what is due within in one month from the date of receipt of a copy of the appeal order; failing which the claimants can execute and recover. No order as to costs.

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

Dr. B.SIVA SANKARA RAO J,

Dt.20.02.2015
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THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

C.M.A No. 4037 of 2004

Date:20.02.2015

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[1] 2009 ACJ 1298

[2] 2005 (6) SCC 236

[3] 2013 ACJ 1403

[4] 2004(2)SCC-297