

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.M.A.Nos.1053 and 1313 OF 2004

COMMON JUDGMENT:

The 2nd respondent-Insurer of the claim petition OP No.747 of 2002 filed under Section 166 of the Motor Vehicle Act,1988 (*for short, 'the Act'*) *for the death of deceased* Kavitha Madhukar Bhangar, a spinster, aged about 21 years, as per the Ex.A.3 Post mortem report, for the claim of Rs.4,00,000/- since granted Rs.1,81,200/- by fixing joint liability against respondents 1 and 2(owner and insurer of the crime lorry bearing No.MH 31 W 6401) aggrieved by the award dated 02.12.2003 passed by the learned Chairman of the Motor Accidents Claims Tribunal–cum-IV Additional Chief Judge, City Civil Court, Hyderabad, (*for short, 'Tribunal'*), preferred appeal CMA No.1053 of 2004 with the contentions in the grounds of appeal as well as in submissions during course of hearing that the compensation as well as rate of interest awarded by the tribunal is excessive and exorbitant without basing on valid reasons, that there is no dependency by the claimants on the deceased since the deceased was a student and not making any earnings, that there is negligence on the part of the 1st claimant-father of the deceased, hence to set aside the award by allowing the appeal. On the other hand, the claimants of the same claim petition also preferred appeal CMA No.1313 of 2004 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, hence to set aside the award and grant as prayed for, by allowing the appeal.

2. Perused the material on record. The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in both the appeals and they are taken up together for common disposal as they are outcome of same accident.

3. Now the common points that arise for consideration in both the appeal are:

1. *Whether the quantum of compensation is either excessive or utterly low so also rate of interest, if so, the award of the tribunal under both the appeals is unjust and require interference by this Court while sitting in appeals against the award to set aside and if so with what observations?*
2. *To what result?*

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Point No.1:

4. There is no dispute on the manner of accident and death of the deceased spinster who is no other than the daughter of the claimants, in the motor accident dated 18.01.2002 which was outcome of rash and negligent driving of the driver of the crime lorry bearing No.MH 31 W 6401 of the 1st respondent insured with the 2nd respondent that dashed against the scooter bearing No.AP28 L 1619 on which the deceased was proceeding as pillion for the scooterist-the 1st petitioner. Now coming to the quantum of compensation and rate of interest which is in dispute is concerned, among the two claimants, the parents of the deceased, the age of the 2nd claimant-mother is about 45 years as per the claim petition. The claim petition is filed under Section 166 of the Act and as per expression of the Apex Court in **Sarla Verma v. Delhi Transport Corporation** where the claimants are parents, half of the amount to be deducted towards personal expenses of the deceased. As per the settled law, the age of the mother is criteria and not the age of the deceased where the deceased is unmarried on the principle that the dependency to be considered with reference to the age of the claimants to say whether the claimants are lesser in age to the deceased or more and the claimants are more in age to the deceased, mother's age is taken into consideration and the multiplier that is applicable, as per Sarla Varma (supra) upto 45 years is 14 and above 46 years 13 but here taken 13.5. Coming to the earnings of the deceased, 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 the same even taken and the accident since dated 18.01.2002 one year after the said expression, with prospective earnings taken at Rs. 3,100/- p.m., apart from that the deceased was a student of first year in Architecture course, if half deducted towards personal expenses, the deceased earnings comes to of Rs.1550/- x 12 x 13.5= Rs.2,51,100/- + Rs.10,000/- towards loss of estate, and Rs.25,000/- towards funeral expenses, as per the expression in **Rajesh v. Rajbir Singh**, in all comes to Rs.2,86,000/- which is just to award, however, reducing rate of interest from 9% to 7.5% p.a. Accordingly, Point No.1 is answered.

POINT No.2:

5. In the result, both the appeals(CMA Nos.1053 and 1313 of 2004) are partly allowed by enhancing the compensation from Rs.1,81,200/- awarded by the tribunal to Rs.2,86,000/- however, by reducing the rate of interest from 9%p.a. to 7.5%p.a. from the date of petition (MVOP) 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. Consequently, miscellaneous petitions, if any, pending in these appeal shall stand closed.

Dr. B. SIVA SANKARA RÃO, J

Date:02.04.2015

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