

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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C.M.A.No.4019 OF 2004

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JUDGMENT:

The claimants maintained the claim under Section 166 of the M.V.Act in M.V.O.P.No.1478 of 2002 on the file of Chairman, Principal Motor Accidents Claims Tribunal-cum-Principal District Judge, Warangal, against owner and insurer of the auto bearing No.AP 36 U 5768, for death of deceased S.Kumara Swamy, aged about more than 30 years as per Ex.A.3 P.M.Report in the accident dated 19.10.2002 at Shambunipet Mosque of Warangal from the auto dashed him when he was on foot with his bicycle and the claim made is he was Mason earning Rs.4,000/- per month that was disputed in the counter filed by the insurer among the owner and insurer appeared through advocate and contested and the Tribunal ultimately arrived the earnings at Rs.1,200/- per month and after 1/3rd deduction from applying multiplier '16' by taking the age 35 years arrived the compensation of Rs.1,83,600/- fixing joint liability against the respondents to pay with interest at 9% per annum, after appreciation of the evidence covered by that of PWs 1 and 2 and Exs.A.1 to A.6.

2. Impugning quantum as utterly low of said award dated 26.07.2004, the claimants maintained the present appeal against same respondents with contentions in the grounds of appeal that the Tribunal gravely erred in not taking the earnings of the deceased at Rs.4,000/- per month as Mason as claimed and not drawn attention to Ex.A.6 Gazette notification fixing the earnings of the Mason at Rs.115/- per day. Hence to allow the appeal as prayed for. Learned counsel for appellants reiterated the same.

3. The 1st respondent-owner of the vehicle having been served did not choose to appear and the 2nd respondent-insurer contested through Advocate that the award of the Tribunal holds goods being just and reasonable and for this Court, there is nothing to interfere but for to reduce the interest from 9% to

7.5% per annum as per the settled law for which no cross objections are required.

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

5. The points that arise for consideration in the appeal are:

1. *Whether the quantum of compensation awarded by the Tribunal is utterly low to enhance and rate of interest is required to be reduced and if so with what observations?*
2. *To what result?*

6. POINT No.1:

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There is no dispute as to the manner of accident, outcome of rash and negligent driving of the auto of R.1 driven by him undisputedly insured with R.2 and the deceased is a third party to the vehicle to make respondents 1 and 2 liable for compensation. Coming to the claim among the three claimants, first claimant is wife and second and third claimants are minor sons. The age of the second claimant in the claim petition shown at about 14 years and the first claimant wife at about 28 years which is difficult to believe her age; to guess age of deceased therefrom as elder to her. The P.M.Report-Ex.A.3 shows age of the deceased about 30 years. The Tribunal therefrom taken the age between 31 to 35 years. The claim is under Section 166 of the M.V.Act. As per **Sarla Verma v Delhi Transport Corporation**, for persons aged between 31 to 35 years, the multiplier applicable is '16', as rightly taken by the Tribunal. Coming to the earnings of the deceased to say that he was a Mason there is no proof. Though he could not produce any recorded evidence when the Civil Supplies Card is there or voters identity showing avocation that is the basis for evidence which they could produce, but not. The Tribunal thereby held that the deceased was not proved as a Mason and estimated his earnings as a labourer at Rs.1,200/- per month. The accident was dated 18.10.2002. As per **Lata Wadhwa Vs. State**

of Bihar in the absence of proof of earnings the minimum earnings have to be taken at Rs.3,000/- per month. Even as per the District Gazette covered by Ex.A.6, 26 working days X 115/- per day even for a Mason, it is not exceeding Rs.3,000/- per month if taken maximum 25 working days a month. Therefrom, if Rs.3,000/- per month taken and 1/3rd deducted towards personal expenses vide **Sarla Verma (supra)**, it comes to Rs.2,000 X 12 X 16 = Rs.3,84,000/- + Rs.1,55,000 vide **Rajesh v. Rajbir Singh** = the loss of consortium Rs.1,00,000/-, funeral expenses Rs.25,000/-, loss of estate Rs.10,000/-, care and guidance to the two minor children Rs.20,000/- = total Rs.5,39,000/-. Thus, what the claimants claimed of Rs.5,00,000/- even confined to that extent is reasonable and is no way excessive. Thus, it requires enhancement from what the Tribunal awarded of Rs.1,83,600/- to Rs.5,00,000/- as prayed for. However, to reduce the rate of interest from 9% to 7.5% per annum from date of claim petition till date of realization vide decision in **Rajesh (supra)**. Accordingly, point No.1 is answered.

7. POINT No.2:

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In the result, the appeal is allowed as prayed for by enhancing the compensation from Rs.1,83,600/- to Rs.5,00,000/-, however by reducing the interest from 9% to 7.5% per annum from date of claim petition till realisation. Rest of the award holds good. There shall be no order as to costs. Consequently, miscellaneous applications, if any, pending in this appeal, shall stand disposed of.

Dr. B. SIVA SANKARA RAO, J

Date: 2nd February, 2015

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