

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.M.A.No.447 of 2004

JUDGMENT :

The Petitioners-appellants, in the claim petition, filed this appeal having been aggrieved by the Order/Award of the learned Chairman of the Motor Accidents Claims Tribunal–cum- District Judge, Medak at Sangareddy, (*for short, 'Tribunal'*) in O.P.No.401 of 1997 dated 22.06.2001, awarding compensation of Rs.3,60,323/-(Rupees Three lakhs Sixty thousand three hundred and twenty three only) with interest at 9% per annum as against the claim of the claimant of Rs.5,50,000/- (Rupees Five lakhs Fifty thousand only), in the claim petition under Section 166 of the Motor Vehicle Act, 1988 (*for short, 'the Act'*).

2. Heard both sides. 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 by the claimants (no other than the mother, wife, major son, minor daughter and unmarried sister of the deceased of whom the 1st claimant-1st appellant mother of the deceased since died and others representing her estate, particularly 5th claimant) are that the Tribunal gravely erred in not taking the correct monthly earnings of the deceased who was working as veterinary assistant as per Ex.A-5, salary certificate shows gross income at Rs.4,523/-, in taking only Rs.4,000/- per month, that the compensation being entitled under various conventional heads not granted hence to allow the claim by arriving a just compensation. The learned counsel for the appellants reiterated the same. Whereas it is the contention of the learned counsel for the insured that the award of the Tribunal holds good supported by reasons and for this Court while sitting in appeal there is nothing to interfere, hence to dismiss the appeal, but for if at all to fix contributory negligence that was not properly considered by the Tribunal, even plea raised in the counter filed by the respondent, for the deceased

was proceeding in opposite direction and his rash and negligent driving also contributed to the accident, that rate of interest also required to be reduced to 7.5% p.a. and hence to dismiss the appeal and reduce interest rate and if not also the compensation arrived.

4. Now the points that arise for consideration in the appeal are:

1. *Whether the compensation awarded by the Tribunal is unjust to enhance, if so with what amount and whether there is contributory negligence on the part of the deceased and the rate of interest is excessive to reduce and with what observations and conclusions?*

2. *To what result?*

POINT-1:

5. The facts that the date of accident, rash and negligent driving of the driver of the crime vehicle and the opposite coming cyclist fell down and sustained injuries and died are proved from the material on record. Coming to the contention raised by the insurer of contributory negligence and rate of interest; undisputedly the deceased was proceeding on his bicycle and the accident was occurred while the crime lorry MWP 6942 coming in opposite direction on the road leading to Jogipet at Jogipet Housing Board Colony near turning. The F.I.R also speaks the place of accident is at the turning while negotiating curve of the road. A perusal of the F.I.R given by one Gangaiah in saying an unidentified vehicle at housing board colony, given a dash and left the person by name Eswar (deceased herein) fell down and sustained head injury and hence to take action. There is nothing to show the bicycle was damaged. Charge sheet not even filed. Scene observation not even filed. The factual matrix show the deceased fell down from the cycle and sustained head injury from the fall and was succumbed subsequently therefrom and the place of accident was while negotiating the curve. There is no possibility of the crime lorry proceeding in high speed in negotiating the curve. It clearly speaks as rightly contended by the learned counsel for the 2nd respondent insurer to the appeal that there is a contribution of the deceased also to the accident that was missed consideration by the

Tribunal. As contributory negligence taken on several factors including place of accident, size of the road and exact place on where it took place and the facts discussed supra petitioner's negligence fixing of 20% contribution on the part of the deceased is just to make the 2nd respondent-insurer liable to indemnify the insurer, the 1st respondent owner of the lorry for remaining 80%. From this, now coming to the quantum, the deceased was aged about 40 years including from Ex.A-4 post mortem report, he was working as Veterinary Assistant, a public servant as per Ex.A-5. Among the 5 claimants, the major sister (5th claimant) is not a dependant on the deceased and out of the remaining four, mother of the deceased died pending the appeal, undisputedly left behind her, the 5th claimant her daughter main legal heir and even out of the three, the 3rd claimant is a major son not dependent on the deceased. Thus, it is 1/3rd towards personal expenses that can be deducted, out of the earnings of the deceased as per **Sarla Varma v. Delhi Transport Corporation**^[1]. Coming to the earnings of the deceased, Ex.A-5 shows gross salary of Rs.4,523/-, the tribunal taken after arriving a net salary of Rs.4,000/- per month. It is the contention of the learned counsel for the claimants that as per **Rajesh v. Rajbir Singh**^[1] following **Sarla Varma** supra, the prospective earnings of the deceased that required to be taken into consideration at 30%, for a person aged between 40 to 50, if that is taken, the income would be Rs.5,200/- per month. If 1/3rd deducted towards personal expenses, out of it, it comes to Rs.3,427/- per month and after applying multiplier '14' it comes to Rs.5,82,456/-. Apart from it, Rs.1,00,000/- towards consortium to the wife, 2nd claimant, loss of estate Rs.10,000/-, funereal expenses Rs.25,000/- and care and guidance to the minor daughter Rs.10,000/- vide **Rajesh** supra, it comes to Rs.7,27,456/-. 80% therein comes to Rs.5,81,965/- rounded to Rs.5,82,000/- is just compensation.

6. Coming to the rate of interest, from the settled proposition of law

in **TN Transport Corporation v. Raja Priya**^[3], and **Rajesh v. Rajbir Singh**^[4]; that while awarding reasonable rate of interest the steep fall in the bank interest rate since past several years has to be kept in mind, interest at 7.5% p.a. as reasonable. The appellate Court also got the discretionary power under Order LXI Rule 33 C.P.C to award reasonable rate of interest from the drastic fall in bank rate of interest in bank rate as laid down by the Apex Court in **DDA Vs. Joginder S. Monga**^[5]. Thus under Section 171 of the MVAct interest is awarded at 7.5% per annum from date of claim petition till realization. Accordingly, Point-1 for consideration is answered.

POINT No.2:

7. In the result, the appeal is allowed by enhancing the compensation from Rs.3,60,323/- to Rs.5,82,000/- (subject to payment of deficit Court Fees on Rs.32,000/- by the claimants before the Tribunal under Rule 475 of A.P.M.V.Rules for execution of the award by making it clear that without payment of Court fees, they cannot execute the award) and by reducing the rate of interest from 9% p.a. to 7.5% from the date of petition till the date of realization. Out of the awarded amount, the 2nd claimant-wife is entitled to 40%, 4th claimant-daughter, since major, entitled to Rs.25%, 5th claimant-sister, though not as sister being legal representing and survived daughter of 1st claimant-mother of the deceased, entitled to 20% and the remaining 15% to the 3rd claimant-son, not a dependant, but a sufferer. There shall be no order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Date: 02-02-2015

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[\[1\]](#) 2009 ACJ 1298

[\[2\]](#) 2013(4)ALT 35(SC)

[\[3\]](#) (2005) 6 SCC 236

[\[4\]](#) 2013(4)ALT 35(SC)

[\[5\]](#) (2004)2 SCC-297