

THE HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.M.A.No.1196 of 2004

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JUDGMENT:

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The 3 claimants two major sons and widowed daughter of the deceased by name Bonala Yadagiri who maintained the claim in M.V.O.P.No.104 of 2002 under Section 166 of the Motor Vehicle Act,1988 (*for short, 'the Act'*), on the file of the learned Chairman of the Motor Accidents Claims Tribunal–cum–Principal District Judge, Medak at Sangareddy(*for short, 'Tribunal'*) against the respondents 1 and 2 i.e. M/s. Ideal Industrial Explosives Private Limited who are owner and Insurer of the crime lorry bearing No.AP10 T 9919) covered by Ex.B.1 policy for the death of the deceased in the motor accident caused by the crime vehicle due to rash and negligent driving of its driver while the deceased was proceeding on his Luna Super on 26.10.2001, for the claim of Rs.4,50,000/- since granted Rs.1,05,000/- with interest at 9%p.a. by fixing liability against both the respondents, preferred the appeal impugning the award dated 12.11.2003 with the contentions in the grounds of appeal as well as submission of their counsel during course of arguments that the compensation awarded by the tribunal is unjust and utterly low and the tribunal erred in applying wrong multiplier against the settled principles, hence to set aside the award of the tribunal and grant compensation as prayed for by allowing the appeal.

2. Whereas, it is the contention of the learned counsel for the contesting 2nd respondent-Insurer that the award of the tribunal holds good and for this Court while sitting in the appeal there is nothing to interfere with the said reasoned award, hence, to dismiss the appeal.

3. The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in the appeal.

4. Now the points that arise for consideration are:-

1) Whether the compensation awarded by the tribunal is unjust and utterly low and requires interference by this Court while sitting in appeal to set aside,

if so, with what compensation and what objections?

2) To what result?

Point No.1:

5. There is no dispute as to the manner of accident but for quantum of compensation. On perusal of the postmortem report shows the death is outcome of the head injury to the left side of skull and the M.V.I. report shows that right side front bumper on the right side, radius grill and headlights of the vehicle of 2nd respondent got damaged, there is head on collision and as contributory negligence depends upon several factors including size of the vehicle and width of the road and the lorry is big in size when compared with the Luna Moped of the deceased and from nature and manner of the accident supra it is just to fix 10% contributory negligence on the part of the deceased. Coming to the earnings of the deceased, as per Ex.A.7 salary certificate, the deceased was an employee in Postal Department and drawing salary of Rs.6,296/- per month and Rs.6,000/- is taken as monthly income if half is deducted towards personal expenses as the claimants are two major sons and widowed daughter not dependants as per settled law, it is Rs.3,000/-p.m. x 12 x 9(the multiplier from the age of the deceased 52 years) it comes to Rs.3,24,000/-, apart from that Rs.25,000/- towards funeral expenses and Rs.10,000/- loss of estate, it comes to Rs.3,59,000/-. Thus the compensation awarded by the tribunal of Rs.1,05,000/- is enhanced to Rs.3,59,000/- and the respondents are liable to pay their 90% liability is of Rs.3,23,100/- by reducing the rate of interest from 9% p.a. to 7.5% p.a. however, by reducing the rate of interest from 9% p.a. to 7.5% as per settled expressions in **TN Transport Corporation v. Raja Priya, and Rajesh** (supra), as held that the steep fall in the bank interest rate for the past several years which is to be kept in mind while awarding interest and awarded therefrom 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**. Accordingly, Point No.1 is answered.

POINT No.2:

6. In the result, the appeal is partly allowed by enhancing compensation from 1,05,000/- to Rs.3,59,000/- with interest at 7.5% p.a. from the date of petition (MVOP) till realization/deposit with notice. Both the respondents are directed to deposit their 90% liability of Rs.3,23,100/-, 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 this appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 10.04.2015

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