

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.M.A.No.3751 of 2004

JUDGMENT :

The claimant, no other than the mother of the deceased (unmarried) by name Gurralla Devendra @ Deva, maintained the claim petition under Section 166 of the Motor Vehicle Act, 1988 (*for short, 'the Act'*) for Rs.1,25,000/- for the accidental death of him dated 01.11.1999 while the deceased was traveling in the trailer bearing No.AP 26 T 4631 attached to the tractor AP 26 T 4630 as a loading and unloading coolie and proceeding to unload, due to rash and negligent driving of the driver of the tractor-cum-trailer insured with 2nd respondent covered by Ex.B-1 policy, the Tribunal having held that the accident was the result of the rash and negligent driving of the driver of the tractor, awarded compensation of Rs.81,000/- with joint liability against both the respondents with interest at 9% p.a.

2) It is impugning the same mainly on the quantum of compensation as utterly low, the claimant preferred the appeal with contentions in the grounds of appeal to allow the appeal as prayed for. It is the contention of the learned counsel for the insurer that there is nothing for this Court to interfere with the quantum of compensation made final and hence to dismiss the appeal.

3) Heard Sri Ch.C.Krishna Reddy the learned counsel for the appellant and Sri P.Phalguna Rao learned standing counsel for the insurer. Perused the material on record. 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 in the appeal are:

1. *Whether the quantum of compensation is utterly low to enhance, if so to what amount and with what observations?*

2. *To what result?*

POINT No.1:

5) The proved facts before the Tribunal are that the accident occurred due to rash and negligent driving of the driver of the crime tractor-cum-trailer and for this Court while sitting in the appeal there is nothing interfere to that extent.

6) It is the submission of the learned counsel for the appellant-claimant that she is the sole surviving legal heir being mother of the deceased un-married and the Tribunal erred in adopting a wrong multiplier by taken her age at 52 years. There is no dispute on the settled law that age of the mother is criterion in determining the dependency. From the claim of earnings of deceased at taken as Rs.50/- to Rs.75/- per day if the same is taken into consideration by fixing Rs.2,000/- per month, if half deducted towards personal expenses, it comes to Rs.12,000/- per annum. Taking the age of the mother of the deceased, as 52 years from the claim petition column No.22 by categorically mentioned, into consideration the multiplier would be 11 as per **Sarla Varma v. Delhi Transport Corporation**^[1], and the compensation comes to Rs.1,32,000/-.

Apart from this, the claimant is entitled to Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of estate as per

Rajesh v. Rajbir Singh^[— 2] it comes to Rs.1,67,000/-. Though the appeal is filed impugning the quantum awarded of Rs.81,000/- for the balance, out of the claim of Rs.1,25,000/-, since laid down in **Rajesh** supra of the just compensation entitled even which arrives more than what was claimed and the appellate Court also can exercise the jurisdiction in favour of claimants-appellants to award the just sum beyond what is claimed, when it comes to Rs.1,67,000/- for the

balance of Rs.42,000/- subject to payment of Court Fees under Rule 475 of A.P.M.V.Rules, same can be awarded. Accordingly, the point No.1 is answered.

POINT No.2:

7) In the result, the appeal is allowed by enhancing the compensation from Rs.81,000/- to Rs.1,67,000/- however by reducing the rate of interest from 9% to 7.5% p.a. from the date of claim petition till the date of realization. The claimant is directed to deposit the deficit Court Fees on Rs.42,000/- as per Rule 475 of the A.P. M.V. Rules without which the claimant cannot execute the award. There is no order as to costs of the appeal. In other respects award of the Tribunal holds good.

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

Dr. B. SIVA SANKARA RAO, J

Date: 23-01-2015

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

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