

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.3977 of 2004

JUDGMENT :

The appellants-claimants, are three in number, no other than husband and two major daughters of the deceased by name Beebijan aged about 45 years as per Ex.A-3 post mortem report claiming compensation for a sum of Rs.3,00,000/- for the accident dated 10.05.2002 allegedly due to rash and negligent driving of the driver of the auto of the 1st respondent bearing NO.AP 27 T 9092 insured with the 2nd respondent covered by Ex.B-1, policy, the tribunal from the evidence of the 1st claimant, P.W-01 and another eye witness P.W-2, intimated and with reference to Ex.A-1 to A-5 and Ex.B-1 awarded Rs.1,40,400/-.

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. It is the contention of the learned counsel for the appellants that the award of the Tribunal is unsustainable and the compensation is utterly low and in ignorance of the settled propositions, hence to allow the appeal as prayed for by awarding just compensation. The learned counsel for the appellants reiterated the same. Whereas, it is the contention of the learned counsel for the 2nd respondent insurer who opposed the claim of overloading and negligence of the deceased, that the award of the tribunal on the quantum of compensation made finally holds good for nothing to enhance and the tribunal, otherwise ought to have been taken into consideration contributory negligence of the deceased and the insurer as respondent without even cross-objections can attack that finding to oppose the enhancement of the claim sought for in the claim petition vide **Ranjana Prakash V. Divisional Manager**^[1].

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

1. *Whether there is any contributory negligence on the part of the deceased and whether the quantum of compensation awarded by the*

Tribunal is utterly low and liable to be enhanced, if so, to what extent and with what observations?

2. *To what result?*

POINT-1:

5. From the very Ex.A-1 report given by one of the inmates of the auto, within no time after the occurrence, it is crystal clear that the auto is against the capacity of 1+3 viz., three in the rear seat, the deceased Beebijan sat in the plank, opposite to the rear side seat to say, if any even there is overloading, it is not the place for her to sit in the auto and apart from a perusal of the report clearly speaks near railway gate, it is allegedly due to the rash and negligent driving of the auto by its driver, the deceased who sat on the plank fell down from the auto. It is not even the case that the auto turned turtle or dashed against other vehicle, but for while proceeding, in attributing even in rash and negligent driving, had the deceased sat in the rear side seat meant for her she could not have been fallen down, but for sat on the plank laid opposite to the seat in so negligently to say there is a contributory negligence on the part of the deceased also. No doubt, the insurer did not file any cross-objections, however as held in **Ranjana Prakash V. Divisional Manager**^[2] though the quantum is made final and even not maintained for claim against the award seeking enhancement to oppose the enhancement, the finding can be attacked by the respondent insurer. Thus, such a contention of the insurer can be appreciated by the Court not for reducing the quantum but for considering any enhancement with reference to it or not. From this, the contributory negligence of the deceased can be fixed atleast 30% to say remaining 75% on the part of the driver of the auto of the 1st respondent insurer with 2nd respondent covered by Ex.B-1 policy from this, now coming to the quantum the deceased as per Ex.P-3 report aged 45 years, the multiplier applicable for persons between 41 to 45 is 14. When the age is shown as 45, the multiplier that can be taken as 13.5 is just vide **Sarla Varma v. Delhi Transport Corporation**^[3]. The earnings of the deceased on the date of accident dated 10.05.2002, as per **Latha Wadhwa vs. State of Bihar**^[4] prospective increase of income

can be taken from the date of accident at Rs.3,100/- per month. If 1/3rd deducted towards personal expenses as among the three claimants, but for 1st claimant husband, the other two sufferers being majors claimed married with no proof even of names of respective husbands, it comes to Rs.3,34,854/-. Apart from which Rs.1,00,000/- towards loss of consortium, Rs.25,000/- towards funereal expenses, Rs.10,000/- towards loss of estate, it comes to Rs.4,69,854/- and 65% therein comes to Rs.3,05,405/- rounded to Rs.3,00,000/-. No doubt as the claimants are the appellants and the claim is under Section 166 of the M.V.Act what they are entitled is just compensation. Accordingly, Point-1 for consideration is answered.

POINT No.2:

6. In the result, the appeal is partly allowed by enhancing compensation for Rs.1,40,400/- to Rs.3,00,000/- but by reducing the rate of interest from 9% p.a. to 7.5% from the date of petition till the date of realization. There shall be no order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Date: 06-02-2015

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[\[1\]](#) 2011(8) SCALE 240

[\[2\]](#) 2011(8) SCALE 240

[\[3\]](#) 2009 ACJ 1298

[\[4\]](#) 2001 (8) SCC 197