

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

MACMA No. 4765 of 2008

JUDGMENT :

Impugning the order dated 31.12.2007 in O.P. No.2271 of 2005 on the file of the Chairman-cum-Chief Judge, City Civil Court, Motor Accidents Claims Tribunal, Hyderabad, the appellant/ insurance company filed the present appeal. The claim filed by the claimants, for the accidental death of the deceased, Ghulam Moinuddin, in a motor accident dated 04.03.2005, under Section 166 of the Motor Vehicles Act for Rs.42,74,396/- alleging that the accident took place due to the rash and negligent driving of the driver of the truck bearing No.AP 9U 3997, insured with the respondent Nos.2 and 3 to the claim petition. The 1st respondent, driver-cum-owner, in the claim petition remained exparte. After full fledged trial, the Tribunal granted compensation of Rs.14,30,600/- with interest at 6%p.a. to the claimants.

2) Heard and perused the material on record.

3) Learned counsel for the appellants contending that the compensation granted by the Tribunal is highly excessive and exorbitant, that the Tribunal ought to have considered that the accident occurred because of contributory

negligence of the deceased also being a motor cyclist at the time of accident and the claim is bad for non-joinder of owner and insurer of the motor cycle as two vehicles are involved in the accident and the claim itself is not maintainable and is liable to be dismissed.

4) Learned counsel for the claimants contended that the accident occurred only due to the rash and negligent driving of the driver of the truck and there was no negligence on the part of the deceased and the Tribunal rightly observed the same and the compensation and interest thereon granted by the Tribunal is to be enhanced but for no cross objections, that the award of the Tribunal holds good and for this Court while sitting in appeal, there is nothing to interfere and prayed to dismiss the appeal.

5) During the course of trial, P.W-2, who is an eye witness to the accident, was examined to prove that the accident was occurred only due to the rash and negligent driving of the 1st respondent apart from filing of Ex.A-3, certified copy of statement of P.W-2 before the police under Section 161 Cr.P.C. Basing on which the police also filed charge sheet against the 1st respondent for the motor accident. Therefore, the Tribunal rightly held that the accident was occurred due to rash and negligent driving of

the 1st respondent. So far as the quantum of compensation concerned, the deceased is aged 49 years at the time of accident as Exs.A-10 to A-14, income tax returns, show the date of birth of the deceased as 02.01.1956. Avocation of the deceased was shown as businessman doing real estate, civil construction work, being a partner in M/s.S.Y.R. Constructions, apart from running a function hall under the name and style of G.M.Function Hall. Income of the deceased is shown as Rs.1,50,387.54 Ps. To prove the same, the claimants produced Exs.A-11 to A-14 income tax returns and examined P.W-3, chartered accountant and P.W-4, one of the partners of M/s.S.Y.S. Constructions to prove the income of the deceased. There is nothing against the claimants regarding income and age of the deceased. By considering the age of the deceased as 49, the multiplier is 13 as per the expression of the Apex Court in *Sarla Verma v Delhi Transport Corporation*¹ which comes to Rs.19,55,038.00 (Rs.1,50,387.54 x 13). After deducting 1/5th towards personal expenses, since the dependants are more than six, it comes to Rs.15,64,030.00 apart from loss of estate, funeral expenses and loss of consortium, it comes more than the compensation granted by the Tribunal and for

¹ 2009 ACJ 1298.

this Court while sitting in the appeal there is nothing to interfere and hence the appeal is liable to be dismissed.

6) Accordingly and in the result, the appeal is dismissed. There is no order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

Dr. B. SIVA SANKARA RAO, J

21.09.2016
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