HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.639 of 2010

JUDGMENT:

The claimants five in number no other than wife, major daughter, minor son and parents of the deceased-Rajalingu , aged about 42 years as per Ex.A3-Post Mortem Report, who maintained the claim under Section 166 of the Motor Vehicles Act (for short 'the Act') for a compensation of Rs.4,00,000/- since arrived by the tribunal of Rs.3,90,000/- with interest at 6%p.a., however, deducted Rs.90,000/- towards contributory negligence of the deceased in awarding Rs.3,00,000/- for the alleged rash and negligent driving of the driver of the auto of the 1st respondent insured with the 2nd respondent, impugning the said quantum as utterly low, maintained the appeal.

2. Heard the learned counsel for the claimants and also the learned counsel for the 2nd respondent-insurer, for 1st respondent-owner remained ex parte even before the tribunal and also in the appeal. Perused the material on record.

3. The accident was occurred while proceeding in opposite direction and the evidence of PW.2-eye witness also speaks that the deceased is known to him; he parked his vehicle at a bank and while proceeding towards Mamda Police Station, the deceased who was coming on his motor cycle, slowed down

his bike on seeing him and in the mean time the accident occurred, which clearly disclose contribution to the accident by the deceased also and what the tribunal arrived of Rs.3,90,000/- as compensation and deducted Rs.90,000/- can be taken at 1/4th, as per Municipal Corporation of Greater Bombay vs Laxman Iyer[1].

4. Now coming to 75% liability of the owner and insurer of the auto bearing No.AP 01T 7981 is concerned, from the age of the deceased 42 years, the accident was in August, 2006 and as per Lata Wadhwa v. State of Bihar[2], in the absence of proof of earnings, minimum Rs.3,000/- to be taken and if taken with proportionate increase, Rs.3,500/- is just to assess the earnings of the deceased. If 1/4th is deducted towards personal expenses of the deceased, it comes to Rs.2,625/- p.m. and Rs.31,500/- p.a. and the same is multiplied with the multiplier 14, it comes to Rs.4,41,000/-. Apart from the same, the claimants are also entitled to Rs.50,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of estate and Rs.10,000/- towards care and guidance to the minor children, in total Rs.5,36,000/- and 75% liability therein comes to Rs.4,02,000/- is the just compensation to award by enhancing from

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[1] 2003 (8) SCC 731

[2] AIR 2001 (SC) 3218

Rs.3,00,000/- to Rs.4,02,000/- and also rate of interest from 6% to 7.5% p.a.

5. Accordingly, the appeal is partly allowed by enhancing compensation from Rs.3,00,000/- to Rs.4,02,000/- with interest at 7.5% p.a. from the date of petition till realization. Rest of the terms of the award of the Tribunal holds good. There is no order as to costs.

6. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date:13.12.2016
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