

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A No.552 OF 2010

JUDGMENT:

The claimants are three in number, who are none other than husband and major son of the deceased Gugulothu Chandi @ Shanthamma, aged about 49 years, as per Ex.A3—post mortem report, maintained M.V.O.P. No.88 of 2008 on the file of Motor Accidents Claims Tribunal—cum—IV Additional District Judge, Warangal (for short ‘the Tribunal’) under Section 166 of Motor Vehicles Act, 1988 (for short ‘M.V.Act’) for a compensation of Rs.3,22,000/- against 1st respondent—owner, 2nd respondent—branch of the insurer—3rd respondent and 3rd respondent—insurer of lorry bearing No.AP 7 TU 1575. From the contest of 3rd respondent—insurer, as respondents 1 and 2 remained *ex parte*, the Tribunal awarded compensation of Rs.1,39,500/- with interest at 7.5% per annum on 18.09.2009. Impugning the said quantum of compensation as utterly low, the claimants maintained the present appeal.

2) Heard learned counsel for appellants—claimants and learned standing counsel for 3rd respondent—insurer. Even notice served on respondents 1 and 2, they did not choose to attend before this Court, hence taken as heard. Perused the material on record.

3) Learned counsel for the appellants—claimants reiterated the contentions in the grounds of appeal vis-à-vis oral submissions are that the Tribunal gravely erred in not taking the correct multiplier and not taking the multiplicand in arriving the just compensation and thereby, it requires enhancement and prayed to grant compensation as prayed for before the Tribunal.

4) Whereas, it is the submission of the learned standing counsel for the insurer that from the averments, the accident was occurred while the deceased was crossing the road and had she taken care of, finder of last opportunity, she could have been averted the accident. Thereby, the said finding is required to be set aside for which no cross objections are required. It is his further submission that once the insurer did not dispute the quantum awarded by the Tribunal but for opposing the enhancement, had the contribution taken into consideration, there is nothing to enhance and prayed to dismiss the appeal.

5) From the very claim petition averments the deceased having left the house, dropped her daughter into the bus and she was in returning home while crossing the road at Maripadiga Stage, lorry bearing No.AP 07 U 1575 driven by its driver came from Suryapet Side to Jangaon side in a rash and negligent manner with high speed, dashed the deceased, which shows there is contribution of the deceased also in the accident. As did she take the precautions while crossing the road by observing the vehicles passing through, she could have been averted the accident.

6) No doubt, from the principle of finder of last opportunity as held by the Apex Court in ***Municipal Corporation of Greater Bombay vs Laxman Iyer***¹ and the lorry driver is also mainly at fault therefrom as held in that expression, thereby that placed reliance by the insurer, it is just to fix 30% liability of the deceased and 70% liability on the respondents viz., owner and insurer of the lorry.

7) Now coming to the quantum of compensation, the accident was occurred on 09.09.2007. Even in the absence of proof of earnings,

¹ 2003 (8) SCC 731

from the claim made under Section 166 of M.V Act, as per ***Lata Wadhwa vs State of Bihar***² the minimum amount of Rs.3,500/- to be taken as earnings of the deceased as on the date of accident. As the age of the deceased was 49 years, the multiplier applicable is '13' and if 1/3rd deducted towards personal expenses, it comes to Rs.2,333/- per month and the dependency comes to Rs.3,64,000/- (Rs.2,333/- X 12 X 13). Apart from it, Rs.50,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of estate, in all it comes to Rs.4,49,000/-. Out of it, 70% liability of the insurer comes to Rs.3,14,200/- rounded to Rs.3,15,000/-.

8) Accordingly and in the result, the appeal is partly allowed enhancing the compensation from Rs.1,39,500/- (Rupees one lakh thirty nine thousand five hundred only) to Rs.3,15,000/- (Rupees three lakhs fifteen thousand only). In other respects the award of the Tribunal holds good. No order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Dt.25.11.2016
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² AIR 2001 SC 3218