

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.815 of 2010

JUDGMENT:

The two claimants, no other than husband and minor daughter of the deceased by name P.Vijaya Sandhya, Junior Lecturer in a Government College, aged about 29 years, who maintained the claim under Section 166 of the Motor Vehicles Act (for short 'the Act'), for a compensation of Rs.25 lakhs, since awarded by the tribunal of Rs.8,11,480/- with interest at 7.5%p.a. vide award dated 02.02.2009 in MVOP No.164 of 2005 against owner and insurer of the jeep bearing No.AP 1 T 6254, impugning the said compensation awarded by the tribunal as utterly low, maintained the appeal.

2. The 1st respondent-owner of the vehicle remained ex parte before the tribunal and it is represented that he is not a necessary party to the appeal vide Chakra Rao vs Yelubandi Babu Rao @ Reddemma¹ and the same is recorded. So far as the 2nd respondent-insurer served, failed to attend.

3. Learned counsel for the appellants/ claimants submitted that the tribunal failed to consider the prospective earnings; taken wrong multiplicand and arrived a wrong sum, which is utterly low and hence to award as prayed for, by allowing the appeal.

4. Heard and perused the material on record.

¹ (2001 (1) ALT 495)

5. The manner of accident shows the deceased was working as a Lecturer in Gudihatnoor of Adilabad District, on 01.03.2005 at about 11.00 a.m. she got down at Gudihatnoor in RTC bus, crossed the road to go to her college and reached the pedestrian margin. At that time, the driver of the jeep bearing No.AP 1 T 6354 came in a rash and negligent manner at high speed and hit the deceased. Before the tribunal, in support of said contest, placed reliance on the evidence of the 1st claimant-husband of the deceased orally, not an eye witness but with reference to Exs.A1-FIR, A2-Inquest Report, A3-Post Mortem Report, A4-MMI Report and A5-charge sheet in relation to the manner of accident and the other witness examined is PW.2-K.Madhav claimed as one of the students in the college. The FIR, charge sheet and inquest report are silent as to at which place of the road, the accident occurred. The petition averments are also silent in this regard. The Scene observation report, which is a material document in this regard to appreciate not seen light of the day. The only evidence in this regard is that of PW.2, so called student saying the deceased after getting down from the bus, while crossing the road and almost reached to the extreme end of the other side was knocked by the jeep. A perusal of the post mortem report shows there are as many as nine external injuries of which mainly head injury, a frontal aspect of the left region of the brain with pancreas rupture besides lacerated injury to the left scalp fracture of left femur with pelvis dislocation, abrasion to left hypogastrium towards xhiphoid besides

three abrasions to the right thigh, right leg, lateral aspect and right elbow of hand. It is clear case of the jeep knocked the deceased while crossing and from the fall she sustained injury. It is not a case of the jeep run over. There is nothing to say the deceased taken any precaution nor there are any indications of the school shown area much less speed breakers cautioning the drivers to proceed there, that too, the manner of accident while crossing the road. The above evidence shows major contribution by the jeep driver but not possible without contribution by deceased that was missed consideration by the tribunal. No doubt, the insurer did not appear before the Court much less with any cross objections. However, the fact remains that the Court cannot shut its eyes. From the proposition laid down in *Ranjana Prakash V. Divisional Manager*² in saying without cross objections, though higher relief cannot be asked, the relief claimed when sought for enhancement can be opposed for anything over and above that was already granted. Here, in the factual matrix, it is difficult to define the finder of last opportunity, though strictly principle has no application to the conditions, as laid down by the Apex Court in *Municipal Corporation of Greater Bombay vs Laxman Iyer*³. Thus, it is a fit case to fix 25% contribution of the deceased and remaining 75% of the owner and insurer of the jeep.

6. Coming to the quantum of compensation, the deceased is proved as a merit student of Post Graduate, working as Junior

² 2011(8) Scale-240

³ 2003 (8) SCC 731

Lecturer in the Government College and born on 24.07.1975 as per S.S.C. certificate and as on the date of accident not completed the age of 30 years. Ex.A6=Ex.B1 showing gross salary of the deceased at Rs.9,242/- and net salary of Rs.8,909/- in February, 2005 and net salary of Rs.9,102/- in March, 2005. Ex.A6 shows from the salary certificate her scale of pay basic Rs.9,285/-. D.A -Rs.700/- HRA Rs.929/- and gross salary Rs.10,914/-. The deductions not shown of P.T. and any other compulsory deductions. The Principal of the Junior College issued both the certificates and even from Ex.A6 after deduction of PT, GIS shown in EX.B1 of Rs.333/- out of Rs.10,914/- even taken Rs.10,500/-, the prospective earnings that can be taken into consideration as per Sarla Verma v. Delhi Transport Corporation⁴ from her age is 50% that comes to Rs.5,250/- in total Rs.15,750/- even deducted 20% towards income tax, it can be safely taken Rs.12,600/- p.m. and 1/3rd is deducted towards personal expenses of the deceased, it comes to Rs.8,400/- p.m. and what the tribunal taken of Rs.6,000/- p.m. is utterly low and for the persons aged between 26 to 30 years of the claim under Section 166 of the Act as per Sarla Verma (supra), the multiplier applicable is '17'. Accordingly, if the same is calculated, it comes to Rs.17,13,600/- (Rs.8,400/- x 12 x 17). Apart from it, the claimants are entitled to Rs.50,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of estate and Rs.15,000/- towards care and guidance to the minor

⁴ 2009 ACJ 1298

child. Thus, the total compensation comes to Rs.18,13,600/- and 75%therein comes to Rs.13,60,200/- is the just compensation to enhance from Rs.8,11,480/-.

7. Accordingly, the appeal is partly allowed by enhancing the compensation from Rs.8,11,480/- to Rs.13,60,200/-. Rest of the terms of the award of the Tribunal holds good. There is no order as to costs.

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

Date:25.11.2016
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Dr. B. SIVA SANKARA RAO, J

