HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.M.P.No.1465 of 2010
IN/AND
M.A.C.M.A.No.96 of 2016

ORDER:

The claimants, six in number are no other than wife, major sons and minor son and minor daughter, respectively of the deceased, K.Tulasi Dharan, aged 53 years as per Ex.A5-driving license of the deceased though Post Mortem report-Ex.A3 mentions about 50 years, who maintained the claim under Sections 166 and 163-A of the Motor Vehicles Act(for short 'the Act') in O.P.No.1076 of 2008 for Rs.12,00,000/-, against owner and insurer of the van bearing No.AP 31TT 0935 since the tribunal while holding the accident was the result of rash and negligent driving of the driver of the crime vehicle of the 1st respondent insured with the 2nd respondent as per Ex.B1-policy, so far as the compensation concerned awarded in all Rs.1,85,000/- by taking earnings of the deceased at Rs.15,000/- p.a. by not believing Exs.A6 and A7 income tax returns for the years 2005-2006 and 2006-2007 which are contrary to Ex.A4-Civil Supplies Card declaring the income of the deceased at Rs.26,000/- p.a. though claimed more than Rs.1,00,000/- in income tax and by adopting multiplier

‘11’ from the said age rightly, with interest at 6% p.a. vide award dated 24.11.2009, impugning the same maintained the appeal with contentions in the grounds of appeal that the tribunal ought to have been awarded compensation as prayed for, should have been considered the age of the deceased as per Post Mortem Report and went wrong in considering the age of the deceased as per the driving license and income as per the ration card, though civil supplies card income is only for the purpose of getting some social benefits and nothing of ignoring the income tax returns, hence to allow the appeal as prayed for with enhanced rate of interest. Whereas it is the contention of the 2nd respondent-insurer that though the 1st respondent served failed to attend, that the award of the tribunal holds good and there is nothing to interfere with the award of the tribunal for no just grounds even to condone the delay and reject the un-numbered appeal.

2. The appeal is filed with a delay of 38 days and sought for condonation and the reason assigned is of financial constraints and ill-health of the first claimant.

3. Heard and perused the material on record. The delay is condoned, subject to condition of not entitled to interest on any enhanced amount till date.

4. Now the appeal is confined to the quantum of compensation as utterly low in deciding what is just compensation. No doubt, as per Ex.A4-civil supplies card, the income shown as Rs.20,000/- p.a. whereas as per Exs.A6 and A7-income tax returns, it is more than Rs.1,00,000/- p.a. There is no proof regarding income tax returns as to when filed and submitted. So far as the civil supplies card, income is concerned, as held in **Rukhmabai vs. Lala Laxminarayan**[1], the persons at times give some statements to get some benefits which are even rely away from truth there that is not the be all and end all to bind much less as estoppel there from but for the Court in appreciation to understand as to which contest the statement is made with reference to the context of evidence before the Court in the *lis.* Having regard to the above, what is the income declaration in the civil supplies card generally shown to get social benefits, thereby cannot the sole criteria to ignore. However, as held by the tribunal the income is not proved much less of this nature of the business to appreciate the same and more over income tax returns are not even certified copes as public documents to give credence. Thus, as laid down by the Apex court in As per **Lata Wadhwa v. State of Bihar**[2]**,** in the absence

of proof of earnings, minimum Rs.3,000/- p.m. to be taken and the accident was dated 09.02.2008, minimum Rs.3700/- p.m. can be taken and 1/3rd is deducted towards personal expenses, as out of six claimants undisputedly even from the civil supplies card-Ex.A4, four are majors as on the date of accident but for the two minors to say wife and two minor children are dependants and the other three are not dependants. Then

it comes to Rs.2467/- p.m. x 12 x 11 (multiplier) = Rs.3,25,600/-. Apart from it, the claimants are entitled to Rs.1,00,000/- towards consortium, Rs.10,000/- towards loss of estate, Rs.20,000/- towards care and guidance to the minor children and Rs.25,000/- towards funeral expenses, in total, it comes to Rs.4,80,600/-, which is rounded to Rs.4,81,000/- is the just compensation the claimants are entitled.

5. Accordingly and in the result, the appeal is partly allowed by enhancing compensation from Rs.1,85,000/- to Rs.4,81,000/-. However, the claimants are not entitled to interest on the enhanced compensation but from today till realization at 7.5%. So far as the interest on the original amount till date concerned, what the tribunal awarded at 6% p.a. no way interfered. There is no order as to costs.

6. Miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:04-01-2016
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[1] **AIR 1960 SC 335**

[2] AIR 2001 (SC) 3218