

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.102 of 2010

JUDGMENT:

The six claimants no other than wife, three children and the parents of the deceased-Sk.Latheef aged about 35 years as per Ex.A4-Post Mortem Report, maintained the claim under Section 166 of the Motor Vehicles Act, for a compensation of Rs.6,00,000/- against the owner and insurer of the lorry bearing No.AP 21X 3589, since the tribunal awarded Rs.3,97,000/- with interest at 7.5% p.a., in O.P.No.396 of 2007 dated 05.11.2009, and impugning the said quantum as utterly low, maintained the appeal.

2. Heard the learned counsel for the appellants/ claimants. The 1st respondent-owner, who remained ex parte before the tribunal and even in the appeal impleaded along with the insurer, who contested before the tribunal, both failed to attend even served and taken as heard and perused the material on record.

3. As per the very petition averments, the deceased with another person were proceeding on the motor cycle bearing No.AP 25L 7937, near IBP Petrol Pump of Doodgaon Village of Balkonda limits, Nizamabad District, opposite coming lorry bearing No.AP 21V 3589 dashed the motor cycle, as a result,

he was succumbed to injuries and died while undergoing treatment in Amrutha Laxmi Hospital, Nizamabad. PW.2 is so called eye witness to the accident. Ex.A1 is the F.I.R. and Ex.A2 is the charge sheet. As per Ex.A4-Post Mortem Report, there is a saturated wound at forehead and right eye brow, fracture of right humerus, fracture of right femur and right tibia and the death was referred as outcome from said multiple injuries. The accident was dated 24.08.2006 and date of death was 31.08.2006.

4. Coming to Ex.A1-F.I.R., which was registered on 24.08.2006 at about 4.00 p.m on the complaint of one K.Sanjeev, mentioned the involvement of the lorry bearing No. AP 21V 3589 and the deceased as an unknown middle aged person. It speaks that when the informant-Sanjeev of Doodgaon Village was proceeding on his scooter near petrol bunk on NH.7 road, the loaded lorry supra dashed the opposite coming motor cycle and out of the two persons travelling therein, one person died at the spot from the head injury and the other person sustained fractures to hand, leg and injury to head and railing out for life. The police after investigation filed charge sheet against the driver of the lorry of the 1st respondent supra. Thus from this, the tribunal rightly came to the conclusion of the accident was the result of rash and

negligent driving of the driver of the crime lorry of the 1st respondent covered by Ex.B1-policy insured with the 2nd respondent.

5. So far as quantum of compensation concerned, there is no evidence regarding avocation of the deceased. The Post Mortem Report shows his age as 35 years and the tribunal taken Rs.3,000/- p.m. and given 1/3rd deduction. Here, a perusal of the claim petition shows there are six claimants and at least 1 to 5 are the dependants including three minor children and hence 1/4th to be deducted towards personal expenses and not 1/3rd. Even taken the earnings of the deceased as on the date of accident at Rs.3,400/- p.m. and after 1/4th deduction, it comes to Rs.2550/- p.m. and Rs.30,600/- p.a. If the same is multiplied with the multiplier '15.5' (applicable from the age of the deceased), it comes to Rs.4,74,300/-. Apart from it, the claimants are entitled to Rs.50,000/- towards loss of consortium, Rs.10,000/- towards loss of estate, Rs.30,000/- towards care and guidance to the minor children, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards treatment expenses till death while under going treatment. Thus, the total compensation comes to Rs.5,99,300/-, rounded to Rs.6,00,000/-, as claimed.

6. Accordingly and in the result, the appeal is allowed by enhancing compensation from Rs.3,97,000/- to Rs.6,00,000/- with interest at 7.5% p.a. from the date of petition till realization. In other respects, the award of the tribunal holds good. There is no order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Date:20.10.2016
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