

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.M.A. No.2301 of 2004

JUDGMENT:

The claimants are no other than wife, two sons and mother of deceased Ramulu, aged about 40 years as per Ex.A3—post mortem report, who maintained the claim petition under Section 163-A of M.V Act (for short 'the Act') for compensation of Rs.3,00,000/- against the owner and insurer of the lorry bearing No.AP 16 V 1186, preferred the appeal impugning the award of the Tribunal dated 27.05.2004 in O.P. No.270 of 2001 in allowing the claim in part granting compensation of Rs.2,11,500/- with interest at 9% per annum, with the contentions that the quantum of compensation awarded by the Tribunal is utterly low and the Tribunal ought to have awarded compensation as prayed for, if not they were entitled to just compensation and the Tribunal gravely erred in not considering several conventional amounts to which the claimants are also entitled and thereby, sought for granting just compensation by allowing the appeal.

2) Whereas it is the contention of the learned standing counsel for the 2nd respondent—insurer that the 1st respondent—owner of the vehicle remained exparte before the Tribunal and did not put forth his appearance in appeal; that the award of the Tribunal is itself excessive and but for no cross objections, the compensation is liable to be reduced and the interest awarded is excessive to reduce for which no cross objections are needed and thereby, sought for dismissal of the appeal by reducing the rate of interest.

3) Heard learned counsel for appellants and learned standing counsel for insurer. Perused the material on record.

4) A perusal of the claim petition averments show that originally Section 166 of Act was mentioned. However, subsequently by amendment as per order in I.A. No.1354 of 2003 dated 04.12.2003 Section 166 of M.V. Act is deleted and Section 163-A was only kept in the claim petition. However, in the prayer, there is no amendment much less any of the body of

the content while saying the accident was result of rash and negligent driving of the claim petitioner. On contest before the Tribunal even by the 2nd respondent—insurer denying the accident and any rash and negligent driving of the driver of the vehicle much less with coverage of risk, the Tribunal formulated the issues including as to whether the accident was the result of rash and negligent driving of the driver of 1st respondent. It was answered in dealing with issue No.1 with reference to FIR, inquest report, post mortem report and charge sheet, the accident was the result of rash and negligent driving of the vehicle. It was when the deceased was coming in an auto, the lorry allegedly dashed the auto in a negligent manner, thereby he met with accident. The owner and insurer of the auto were not impleaded as parties to the claim petition, for that there is no issue formulated by the Tribunal. If the claim is under Section 163-A of the Act the involvement of the vehicle itself is sufficient to adopt the structured formula for not a duty of the claimants to plead or prove any rash and negligent driving but for the accident occurred while the vehicle is in use. However, the Tribunal dealt with in holding the accident was the result of rash and negligent driving. Therefrom, the Tribunal arrived compensation by taking the earnings of the deceased, aged about 40 years as per Ex.A3—post mortem report with '16' multiplier, at Rs.1500/- per month by the date of accident in the year 2000 and deducted 1/3rd towards personal expenses. Apart from it, Rs.2,000/- towards funeral expenses, Rs.15,000/- towards loss of consortium, Rs.2,500/- towards loss of estate, were granted in arriving compensation of Rs.2,11,500/-. In fact, from a perusal of the award of the Tribunal, the quantum arrived from the earnings taken from the evidence on record is not too much for interference. Once the claim is answered under Section 166 of M.V Act besides the compensation to be arrived for loss of earnings from the contribution of the deceased that could be given to the claimants. The 1st claimant is entitled to loss of consortium, the 2nd and 3rd claimants—minors particularly are entitled for care and guidance besides loss of estate and funeral expenses, thereby the claim made for Rs.3,00,000/- is just to enhance the compensation by allowing the appeal, though to the extent of rate of interest is required to be reduced to 7.5% per

annum the same is not interfered with.

5) Accordingly and in the result, the appeal is allowed enhancing the compensation from Rs.2,11,500/- (Rupees two lakhs eleven thousand five hundred only) to Rs.3,00,000/- (Rupees three lakhs only) with interest at 9% per annum from the date of petition till realisation. In other respects the award of the Tribunal holds good.

6) Consequently, miscellaneous petitions, if any pending in this Appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.24.06.2016

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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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Date:24.06.2016

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