HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.M.A.No.3492 of 2004

ORDER:

The claimants, who are no other than wife and major unmarried and so called handicapped daughter of the deceased E.Veeresham, aged about 42 to 46 years as per Ex.A5-Post Mortem Report claimed as earning by doing business at Rs.15,000/- p.m. maintained the claim under Section 166 of the Motor Vehicles Act (for short 'the Act') for Rs.10,00,000/- against the owner and insurer of the lorry bearing No.MH 09 KB 4372 with the averments that on 08.08.1999, while the deceased along with his wife/1st claimant were travelling in Maruti car bearing No.AP 9R 7770 from Hyderabad to Yadagirigutta, near Avisapur Village due to the rash and negligent driving of the driver of the lorry of the 1st respondent dashed the Maruti car from opposite direction, as a result of which the deceased sustained multiple injuries and was succumbed and the 1st claimant sustained injuries who was one of the passengers travelling in the car driven by the deceased.

2. The trial Court after contest held that the accident was the result of rash and negligent driving of the driver of the lorry of the 1st respondent alone for no contributory negligence that could be proved of the deceased car driver, having arrived earnings of the deceased at Rs.15,000/- p.m. as on the date of accident i.e., 08.08.1999 for no proof regarding the earnings

including from the income tax returns under Ex.A6 nothing demonstrates of husband getting from business Rs.15,000/- p.m., awarded compensation Rs.3,27,000/- with interest at 9% p.a. Same is now impugned as quantum is utterly low to enhance.

3. Learned counsel for the claimants/appellants submitted that the trial Court ought to have been taken the income of the deceased from doing business at Rs.15,000/- p.m. as claimed and fixing Rs.3,000/- p.m. is utterly low and other conventional sums also not awarded. Hence to allow the appeal as prayed for, before the tribunal.

4. Whereas, it is the contention of the learned counsel for the insurer that besides rate of interest is excessive which can be reduced within the discretionary power of the Court for which no cross objections are required to exercise power under I.T.I. Motor Vehicles, there is nothing to interfere with the quantum of compensation even for having proved of doing any business or getting any income more than Rs.1,5000/- p.m. taken by the tribunal as per the Schedule-II otherwise and thereby sought for dismissal of the appeal.

5. Heard and perused the material on record.

6. The Maruthi car which was driven by the deceased in proceeding along with his wife at the time of accident belongs to him is not in dispute even from Ex.B1-policy. Thereby the tribunal could not have been stated Rs.50/- per day of earnings of a coolie can be taken. However, there is no proof either

regarding the business or regarding the income even from Ex.A6-income tax returns. The tribunal also categorically observed there is no proof of the income there-from. In the absence of which and even Ex.A7-profit and loss account to place reliance no-body who made the entries even examined as contemplated by Section 34 of the Evidence Act, to give even a little credence to it there from ignored by the tribunal. With that observation Exs.A6 and A7 cannot be given credence. As per Lata Wadhwa v. State of Bihar[1], in the absence of proof of earnings Rs.3,000/- p.m. can be taken and as the accident was in August, 1999 nearly one and half years before the expression, even Rs.2,600/- p.m. taken, the earnings of the deceased on average estimation as on the date of accident if 1/3rd deducted towards personal expenses of the deceased, it comes to Rs.1733 x 12 x 13.5 (multiplier applicable though taken 13 can be taken 13.5 as per Sarla Verma v Delhi Transport Corporation[2] whereunder upto 45, it is 14 and from 46, it is 13) Rs.2,80,800/-. Apart from it, the claimants are entitled to Rs.50,000/- towards consortium, Rs.10,000/- towards loss of estate, and Rs.25,000/- towards funeral expenses, in total, it comes to Rs.3,65,800/-, which is rounded to Rs.3,66,000/- is the just compensation the claimants are entitled. However the rate of interest is reduced from 9% to 7.5%

---

[1] AIR 2001 (SC) 3218
[2] 2009 ACJ 1298.

p.a. as per Rajesh Vs. Ranbir Singh[3] and TN Transport Corporation v. Raja Priya[4].

7. There is nothing to show any contribution of the deceased or the driver not possessing valid driving license but for M.V.I.Report-Ex.A3 speaks from column No.17 of driving license not produced. Even Ex.A2-charge sheet no way mentions any Motor Vehicles Act offence of not possessing valid driving license and there is no evidence even much less worth cross examination in this regard by the insurer thereby the tribunal rightly held joint liability to pay.

8. Accordingly and in the result, the appeal is allowed by enhancing compensation from Rs.3,27,000/- to Rs.3,66,000/- and by reducing interest from 9%p.a. to 7.5%p.a. from the date of claim petition till realization. Rest of the award holds good. There is no order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Date:08-08-2016
pab

[3] **2013 ACJ 1403**
[4] (2005) 6 SCC 236