

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.M.A. No.1271 of 2004

JUDGMENT:

The sole injured claimant since died pending the M.V.O.P. No.561 of 2000 maintained the claim for Rs.5,00,000/- under Section 166 of M.V.Act (for short 'the Act') and his wife and sons were impleaded as legal representatives (for short 'L.Rs') vide order in I.A. No.1496 of 2000 dated 13.03.2001 for continuing the claim. It was after contest of the deceased died due to the injuries in the accident, six months after the accident, held not possible to believe including from evidence of PW.2—Dr.Lakshmanarao, in the cross examination that the alleged grievous injury covered by Ex.A2—wound certificate is not sufficient to cause death, for no possibility therefrom, in disbelieving the evidence of PW.1 of subsequent to the accident the deceased could not move out and died therefrom. It was, in all, the Tribunal awarded compensation of Rs.25,000/- including from the proof of medical bills under Ex.A5 incurred of Rs.22,587/-.

2) It is impugning the quantum of compensation awarded as utterly low and with the contest of the Tribunal ought to have awarded compensation as prayed for, maintained the appeal against self same three respondents, who are the driver, owner and insurer of the vehicle but for the insurer—3rd respondent, other respondents are not contesting.

3) Heard learned counsel for appellants and learned standing counsel for 3rd respondent—insure. Perused the material on record.

4) The learned counsel for claimant reiterated the above in support of the appeal grounds. It is the contention of the learned standing counsel for insurer that the award of the Tribunal no way requires interference and under the principle of ***Actio personalis moritur cum persona***, the injured once died even pending the claim petition he filed, the personal action won't survive but for any loss suffered by estate and thereby what the Tribunal awarded of Rs.25,000/- no way requires interference much less to enhance.

5) The law is now settled that the latin maxim *Actio personalis moritur cum persona* of the Anglo Saxon law has no strict application to the Indian conditions also with reference to the provisions of the Indian Succession Act, 1925 and there are several expressions in this regard that once the claim is maintained by the injured, the LRs can continue the pending claim from the death of injured claimant, for adjudication and their compensation to be assessed is as if the injured was alive though died subsequently.

6) The evidence on record clearly shows the injured sustained grievous injuries and medical prescriptions and bills also proved of the medical expenses incurred of Rs.22,587/-.

7) Having regard to the above, from the date of accident dated 16/17.11.1999, even taken for the injuries an amount of Rs.20,000/- and Rs.22,587/- towards treatment and medical expenses, Rs.12,413/- towards transport charges, attendant charges and loss of earnings, it comes to Rs.55,000/- as the just compensation to award.

8) So far as rate of interest is concerned, the interest at 9% per annum awarded by the tribunal is on high side from the settled proposition of law including from the expressions of the Apex Court in ***T.N.Transport Corporation Vs. Raja Priya***^[1] and ***Rajesh vs Rajbir Singh***^[2]. As such the interest is to be awarded at 7.5% per annum, by modifying and reducing the rate of interest from 9% per annum, from the date of claim petition till realization.

9) Accordingly, the appeal is partly allowed by enhancing the compensation from Rs.25,000/- (Rupees twenty five thousand only) to Rs.55,000/- (Rupees fifty five thousand only) with interest at 7.5% per annum from the date of claim petition till realisation. Rest of the terms of the award holds good. No order as to costs.

10) Miscellaneous petitions, if any pending in this Appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.03.06.2016
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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[\[1\]](#) 2005(6) SCC 236

[\[2\]](#) 2013 ACJ 1403