HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A. No.4298 of 2008

JUDGMENT :

The 3rd respondent among four respondents of the claim petition in O.P. No.646 of 2001 maintained the appeal impugning the award dated 16.04.2008 of III Motor Accidents Claims Tribunal, Warangal, where the claim made by five claimants viz., wife, minor children and parents of the deceased under Section 166 of the Motor Vehicles Act for Rs.43,20,000/-, from the evidence on record, the Tribunal held that all the four respondents are jointly and severally liable to pay compensation of Rs.21,30,000/- with interest at 8.5% p.a, the 3rd respondent-insurer of the vehicle of the 1st respondent maintained the appeal.

2) The contentions in the grounds of appeal are that the compensation awarded is excessive, so also the rate of interest and income tax deduction not even given out of the earnings taken, multiplier adopted is wrong, thereby sought for reducing the compensation to a just amount.

3) Whereas, it is the contention of the learned counsel for the claimants that the award of the Tribunal holds good and there is nothing to interfere for this Court while sitting in the appeal saying but for no cross-objections, compensation awarded requires

enhancement.

4) Heard and perused the material on record. The matter was earlier adjudicated by the award of the Tribunal in O.P. on 19.12.2003 holding the claimants are entitled to the total compensation claim of Rs.43,20,000/- with interest and impugning the same, the present appellant (3rd respondent) of the claim petition/insurer of the vehicle of the 1st respondent maintained the appeal and a division bench of this Court while finding the accident was the result of the rash and negligent driving of the driver of the lorry as rightly held by the Tribunal, remanded to the extent of re-determination of the compensation as excessive. It is pursuant to the remand order of the High Court Division bench in C.M.A. No.1363 of 2004 dated 20.12.2007, the Tribunal re-determined the compensation covered by the impugned order dated 16.04.2008 holding that the claimants are entitled to the compensation of Rs.21,30,000/- with interest at 8.5% p.a. It is same as referred supra impugning on the grounds referred supra.

5) Now, coming to the correctness of the compensation for no way requires which assailing of the findings. There is a loose reference in the award while re-determining the compensation of all the respondents are directed to deposit, if at all for the interse despite between the two vehicle owners and the insurers afresh to agitate

vide ***khenyei v. New India Assurance Company Limited***[1] of three Judges bench holding that payment of the compensation by the appellant-insurer of the lorry of the 1st respondent to the claim petition and recovery if at all entitled of showing contribution of the other by filing execution petition. So far as quantum of compensation concerned, the gross salary of the deceased shown Rs.17,367/- as medical officer in Mahatma Gandhi Hospital and there is no much dispute on it, so also the age of the deceased shown 40 years including as Ex.A-3 post mortem report though there is no other evidence of he is working as Tutor and also getting further income.

6) Coming to the claim from Rs.17,367/- per month as gross salary, the income tax deduction not shown concerned, even same deducted besides other compulsory deductions even taken Rs.16,000/- per month salary net, the claimants are five in number, 1/4th has to be deducted towards personal expenses as per **Sarla Verma v Delhi Transport Corporation**[2] it comes to Rs.12,000/- per month and Rs.1,44,000/- per annum. The multiplier for persons aged upto 40 years is 15 and above 41 years is 14, even taken the multiplier for the present case as 14.5, it comes to Rs.20,88,000/-. Apart from the same, Rs.50,000/- towards loss of consortium to the 1st claimant and Rs.30,000/- towards care and guidance to

the children, Rs.25,000/- towards funereal expenses and Rs.10,000/- towards loss of estate, in total it comes to Rs.22,03,000/- and what the Tribunal awarded of Rs.21,30,000/- no way excessive.

7) It is the contention of the insurer that there is a personal accident coverage of Rs.3,00,000/- for the accidental claim of the deceased and that requires to be deducted. In this regard what the Tribunal held under the impugned order is not specific. Once, it is a personal accident claim coverage which requires to be deducted for the payment shown by the insurer, there is no such proof filed but for oral contention. If that is the case, if prospective earnings of the deceased by following **Rajesh v. Rajbir Singh**[3] even taken at 30% from the age of 40 years, what was awarded by the Tribunal no way requires interference including by giving deduction of Rs.3,00,000/-. But the rate of interest at 8.5% p.a. shall be modified as per **Rajesh v. Rajbir Singh**[4] to 7.5% p.a.

8) In the result, the appeal is partly allowed by reducing the rate of interest from 8.5% p.a. to 7.5% p.a. and the rest of the terms of the award of the Tribunal holds good. There shall be no order as to costs. Pending miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

31.08.2016

ksh

---

[1] (2015)9 SCC 273

[2] 2009 ACJ 1298.

[3] 2013 ACJ 1403=(4)ALT-35(SC).

[4] 2013 ACJ 1403=(4)ALT-35(SC).