

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.M.A. No.1687 of 2004

JUDGMENT:

The claimants are wife, two minor children and aged parents of deceased I.Krishna Mohan Sarma, aged about 36 years as per Ex.A3—post mortem report, maintained the claim petition against the driver, owner and insurer of lorry bearing No.AIJ 699 for compensation of Rs.3,00,000/- under Section 166 of M.V Act (for short ‘the Act’) for the accidental death of the deceased in the motor accident dated 31.10.1992 from which the deceased breathed the last within few hours on the early morning of 01.11.1992. After contest by the 3rd respondent—insurer, the Tribunal awarded compensation of Rs.1,40,000/- with interest at 12% per annum against respondents 2 and 3 i.e., owner and insurer of the claim petition on 09.05.1997. Impugning the quantum of compensation awarded by the Tribunal is utterly low, the appellants maintained the appeal, seeking to award compensation as prayed for.

2) Heard learned counsel for appellants, learned counsel for 2nd respondent—owner of the vehicle and learned standing counsel for 3rd respondent—insurer. The respondent No.1—driver of the lorry remained ex parte before the Tribunal even impleaded in this appeal dismissed for default, which is no way fatal to the maintainability of the appeal vide Division Bench expression of this Court in ***Meka Chakra Rao vs Yelubandi Babu Rao***^[1] and the same is recorded. Perused the material available on record.

3) The contention of the learned counsel for appellants is that the Tribunal ought to have considered the earnings of the deceased as pujari at Rs.100/- per day as avocation besides income from agricultural land. In fact, there is no proof of possessing agricultural land by any revenue record apart from possessing of any land that the claimants succeeded but for loss of profession even for no loss of estate, hence to allow the appeal.

4) Whereas it is the contention of learned counsel for 3rd respondent—insurer and the 2nd respondent—owner of the vehicle that the award of the Tribunal holds good and for this Court while sitting in appeal there is nothing to interfere, hence to dismiss the appeal.

5) The evidence on record establishes that the accident was the result of rash and negligent driving of the driver and owner, there is nothing to interfere much less any cross examination even in that regard.

6) Now coming to the dispute on quantum of compensation, though it is claimed by the appellants that the deceased was earning Rs.100/- per day as on the date of accident, the Tribunal has taken the earnings of the deceased at Rs.1,000/- per month. Even by that time the minimum earnings that can be taken of Rs.50/- per day or Rs.1500/- per month. As the claimants are four in number after deducting 1/4th towards personal expenses it comes to Rs.1125/-, as per **Sarla Verma vs Delhi Transport Corporation**^[2] the multiplier applicable for the persons aged between '36-40' is '15' and after applying the said multiplier, it comes to Rs.2,02,500/-. Apart from it Rs.10,000/- towards funeral expenses, Rs.10,000/- towards loss of estate, Rs.10,000/- towards care and guidance of two minor children, Rs.20,000/- towards loss of consortium, in all it comes to Rs.2,52,500/- which is the just compensation. Accordingly, the compensation is enhanced from Rs.1,40,000/- to Rs.2,52,500/-.

7) So far as rate of interest is concerned, the interest at 12% 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 Corp. vs. Raja Priya**^[3] and **Rajesh vs Rajbir Singh**^[4], as such the interest is awarded at 7½ % per annum, by modifying and reducing the rate of interest from 12% per annum, from the date of claim petition till realization.

8) Accordingly and in the result, the appeal is partly allowed by enhancing the compensation from Rs.1,40,000/- (Rupees one lakh forty

thousand only) to Rs.2,52,500/- (Rupees two lakhs fifty two thousand five hundred only) and reducing the rate of interest from 12% per annum to 7.5% per annum from the date of petition till realisation. However, the claimants are not entitled to interest on the enhanced compensation but from today. In other respects the award of the Tribunal holds good. No order as to costs.

9) Consequently, 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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[\[1\]](#) 2001 (1) ALT 495 DB

[\[2\]](#) 2009 ACJ 1298

[\[3\]](#) 2005(6) SCC 236

[\[4\]](#) 2013 ACJ 1403