

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.3067 of 2005

JUDGMENT:

The four claimants, no other than husband, major daughter(unmarried), major son and minor son of the deceased by name, Lakshmi, and the first claimant maintained the claim under Section 163-A of the Motor Vehicles Act, for Rs.2,65,000/- as compensation for the death of the deceased in the accident dated 28.02.2001 due to the rash and negligent driving of the jeep bearing No.TN 33N 1595 of the 1st respondent insured with the 3rd respondent.

2. The claim was contested by the insurer. The tribunal after considering the evidence of PW.1-3rd claimant and with reference to Exs.A1 to A6, F.I.R, altered F.I.R., inquest report, post mortem certificate, M.V.I.Report and charge sheet, awarded compensation of Rs.1,19,600/- while holding that the accident was the result of rash and negligent driving of the jeep driver. It is impugning the said award dated 02.08.2005 in O.P.No.408 of 2001 as utterly low, the claimants maintained the present appeal against self same respondents.

3. The 2nd respondent though remained exparte before the tribunal and not shown as anywhere related to the claim to be made liable not pressed in the appeal and the same is

recorded.

4. Heard the learned counsel for the appellants/claimants and 1st respondent-owner of the vehicle. The 3rd respondent-insurer even served failed to attend. Perused the material on record.

5. The fact that the accident was the result of rash and negligent driving of the driver of the jeep, from the evidence of PW.1 with reference to Exs.A1, A2, A4, A5 and A6 proved, as concluded rightly by the tribunal of the said finding not challenged and made final.

6. Now the dispute is with regard to the quantum of compensation. The tribunal arrived the earnings of the deceased at Rs.55/- per day by taking into consideration of the avocation of the deceased as vegetable vendor, for no proof to claim Rs.3,000/- p.m. In **Kishan Gopal Vs Lala** ^[1] at page No.257 para-39, the Apex Court categorically observed that in the absence of proof of earnings as per structured formula Rs.15,000/- p.a.to be read as Rs.30,000/- p.a., while recommending to amend. If the same is taken into consideration and 1/3rd is deducted towards personal expenses of the deceased (there is major son among four claimants not dependant), it comes to Rs.20,000/- and loss of dependency comes at Rs.20,000/-x14 (the multiplier applicable from the age of the deceased as per Schedule II of the Act is '14') =Rs.2,80,000/-. Apart from it, the petitioners are entitled to Rs.5,000/- towards loss of consortium, Rs.2,000/- towards funeral expenses and

Rs.2,500/- towards loss of estate (as per Schedule II of the Act). Thus, in total it comes to Rs.2,89,500/-.

7. Accordingly, the appeal is allowed by enhancing compensation from Rs.1,19,600/- to Rs.2,89,500/-, subject to payment of deficit court fee over and above Rs.2,65,000/- already paid under Rule 475 of A.P.M.V.Rules before the tribunal, within one month from the date of receipt of a copy of this judgment. The interest is awarded at 7.5% throughout. In other respects, the award of the tribunal holds good.

8. The claimants/appellants are not entitled to execute decree, without payment of deficit court fee. There is no order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Date:23-03-2016

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[\[1\]](#) 2014(1)SCC-244)