HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.250 of 2010

JUDGMENT:

The claimants, six in number, are no other than wife, minor child, father, mother, brother and sister of the deceased-B.Prakasah. The brother and sister of the deceased are no way dependants but for the other claimants 1 to 4, who maintained the claim under Section 166 of the Motor Vehicles Act (for short 'the Act'), for a compensation of Rs.2,50,000/- for the death of the deceased on 01.12.2004 while traveling in the auto bearing No.AP IV 1170 saying the opposite coming lorry of the 1st respondent insured with the 2nd respondent bearing No.TN 45X 3729 dashed, as a result, among other auto passengers sustained injuries including the deceased, aged about 30 years as per Ex.A2-Post Mortem Report succumbed to the injuries on the same day and from the contest by the 2nd respondent from owner of the vehicle remained ex parte, the tribunal having held that the accident was the result of rash and negligent driving of the lorry driver, fixed compensation of Rs.2,17,000/- with interest at 7.5% p.a. on 19.11.2008 in O.P.No.169 of 2005 and impugning the same, the present appeal is filed.

2. It is the contention of the learned counsel for the claimants that the tribunal gravely erred in not considering

the income of the deceased, even claimed respective earnings from business and agricultural at Rs.4,000/- p.m. and Rs.3,000/- p.m. only and the multiplier arrived is not correct and hence to award compensation as prayed for.

3. Whereas, it is the submission of the learned counsel for the insurer that the award of the tribunal holds good and for this Court while sitting in appeal, there is nothing to interfere and hence to dismiss the appeal.

4. The claim is under Section 166 of the Act. As per Ex.A2-Post Mortem Report, the deceased was aged about 30 years. The multiplier applicable under Section 166 of the Act for the persons aged upto 30 years is 17 and 31-35 years is 16, hence, it is just to take multiplier as 16.5 . So far as earnings of the deceased, the tribunal came to the conclusion that though the deceased was claimed as agriculturist and placed reliance on Ex.A3-Pahanis, the land is not in the name of the deceased and there is no evidence to show he has owned the land from the said evidence placed on record through whom the avocation is not shown or proved much less income and thereby, estimated the earnings and arrived at Rs.3,000/- p.m. In fact, the accident was dated 01.12.2004 and as per Lata Wadhwa v. State of Bihar[1], in the absence of proof of earnings, minimum Rs.3,000/- to be taken into consideration

[1] AIR 2001 (SC) 3218

and the accident was in December, 2004 after three years of the expression, earnings of the deceased can be taken at Rs.3,400/- p.m. As the claimants are four in number, if 1/4th is deducted towards personal expenses of the deceased, it comes to Rs.2,550/- p.m. and Rs.30,600/- p.a. and the same is multiplied with the multiplier '16.5' (applicable from the age of the deceased), it comes to Rs.5,04,900/-. Apart from the same, the claimants are entitled to Rs.50,000/- towards loss of consortium, Rs.10,000/- towards loss of estate, Rs.10,000/- towards care and guidance to the minor child and Rs.25,000/- towards funeral expenses. Thus, in total Rs.5,99,900/- rounded to Rs.6,00,000/- is the just compensation to enhance from Rs.2,17,000/- to Rs.6,00,000/-.

5. Now, coming to the contention of the learned counsel for the insurer that the accident was occurred while both the vehicles were proceeding in opposite direction and the non-impleadment of the owner and insurer of the auto is fatal and there is a contribution that to be considered. In this regard, the Apex Court in Khenyel v. New India Assurance Company Limited[2] held that the non-impleadment of the other vehicle owner or insurer is no way fatal but for left open to the

[2] 2015(9) SCC 273

vehicle insurer and the owner impleaded to pay the compensation being the tort feasors to claim subsequently the apportionment from the other tort joint feasors from the contribution if any.

6. Having regard to the above, same is left open while depositing the amount to make application before the tribunal for apportionment of the liability against the auto driver, owner and insurer also if any, to claim.

7. Accordingly, the appeal is allowed by enhancing the compensation from Rs.2,17,000/- to Rs.6,00,000/-, subject to payment of deficit Court fee under Rule 475 of the A.P.M.V.Rules. The claimants are entitled to the interest at 7.5% p.a. on the enhanced amount from today only. In other respects, the award of the tribunal holds good. There is no order as to costs.

8. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date:02.11.2016
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