

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.4306 of 2008

JUDGMENT:

The claimant Nos.1 to 4 no other than the wife, minor children and mother of the deceased Pothaiah aged about 30 years as per Ex.A4-PM report, claiming as working as technician with a salary of Rs.6,500/- per month, maintained the claim for Rs.13,00,000/- under Section 166 of the Motor Vehicles Act (for short 'the Act') against the owner and insurer of DCM Van bearing No.AP-22-T-4466. The Tribunal awarded a compensation of Rs.1,52,000/- with interest @ 7.5% per annum vide award dated 19.05.2008 in O.P.No.887 of 2005. Impugning the same, the present appeal is maintained by the claimants.

It is represented that respondent No.1 remained exparte before the Tribunal, not a necessary party to the appeal vide **Meka Chakra Rao V. Y.Babu Rao**¹ and the same is recorded.

Heard both sides and perused the material on record.

It is the contention of the learned counsel for the claimants that the Tribunal ought to have taken the earnings and awarded compensation as prayed for. Whereas it is the contention of the learned counsel for the insurer that the award of the Tribunal holds good, for this Court while sitting in appeal there is nothing to interfere.

The manner of accident is that on 23.09.2005 while deceased and his friend were proceeding on two wheeler bearing No.AP-28-AG-2841 near Agapally Village, Manchal Mandal, crime DCM Van of 1st respondent came at high speed and dashed the bike, as a result

¹ 2001(1) ALT 495 (DB)

the deceased and his friend were succumbed to the injuries and the same is rightly held by the Tribunal with reference to Ex.A1-FIR, A4-PM report, Ex.A6-charge sheet and A5-MVI report that the accident was the result of the rash and negligent driving of the driver of DCM Van and there is nothing to say any contribution of the deceased.

Now coming to the quantum, the grounds of appeal speaks the deceased was a skilled worker and earning Rs.6,500/- per month and deposed through PW.3 and with reference to Ex.A7 salary certificate. There is no other material but for the salary certificate much less as to qualification of the deceased was a skilled worker. Taking into consideration the date of expression of the Apex Court in **Latha Wadhwa Vs. State of Bihar**² even domestic earnings of house wife can be taken as Rs.3,000/- per month, if Rs.3,500/- per month is taken into consideration from the 4 claimants in number as dependents, $1/4^{\text{th}}$ deducted therefrom it comes to Rs.2,625/- $\times 12 \times 17$ (multiplier) = Rs.5,35,500/- apart from even Rs.50,000/- for loss of consortium, Rs.25,000/- funeral expenses, Rs.10,000/- loss of estate and Rs.30,000/- care and guidance to the 2 minor children, it comes to Rs.6,50,500/- is the just compensation entitled by the claimants.

Accordingly, the appeal is partly allowed by enhancing compensation from Rs.1,60,000/- to Rs.6,50,500/- with same rate of interest and in other respects the award of the Tribunal holds good.

Consequently, miscellaneous petitions, if any shall stand dismissed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 30.08.2016
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² 2001 (8) SCC 197