

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.230 of 2010

JUDGMENT:

The claimants are 5 in number, no other than wife, children and parents of the deceased aged about 30 years as per Ex.A3 PM report, maintained the claim for Rs.5,00,000/- under Section 166 of MV Act against the owner and insurer of the tractor bearing No.AP-22-U-9405 with averments that on 04.07.2007 deceased while proceeding on his motorbike bearing No.KA-36-H-3014 towards his native village from Kadempally Village at about 6PM at Kosgi village on the road due to rash and negligent driving of the driver of the tractor of the 1st respondent supra, same dashed against the bike as a result of deceased fell down sustained injuries and died, from the contest by the respondents and from the evidence on record of PWs.1 to 3 and RW.1 and Exs.A1 to A8 and Ex.B1 policy, what the Tribunal held that the accident was result of the rash and negligent driving of the driver of the crime tractor and the 2nd respondent insurer also liable to indemnify to policy in force in fixing joint liability and awarded compensation of Rs.2,88,800/- with interest @ 7.5% per annum in O.P.No.631 of 207 dated 25.02.2009, impugning the said quantum as utterly low maintained the appeal.

Learned counsel for the appellants/claimants reiterated the above contentions saying Tribunal gravely erred in adopting appropriate multiplier and also arrived at utterly low amount he was also tailor and earning Rs.800/- per day and went wrong in taking Rs.2,100/- per month, thereby grant just compensation as prayed for. Whereas it is the learned counsel for the respondent

insurer that the award of the Tribunal holds good but for no cross objections to reduce compensation by fixing contributory negligence there is nothing to interfere on the quantum even otherwise hence to dismiss the appeal.

Heard and perused the material on record.

The accident took place on the road undisputedly while proceeding in opposite direction and the deceased was rider of the bike at the time of accident and there is collision of the tractor belongs to 1st respondent driven by its driver and the bike of the deceased. Though FIR and charge sheet are against the driver of the tractor of the 1st respondent but for contributory of the deceased also, otherwise it could not have been taken place. No doubt contributory negligence depends upon several factors including size of the road, condition of the road and size of the vehicle. No scene observation is placed before the Court. The cause of death mentioned as respiratory failure due to collapse of lungs in the PM report-Ex.A3. The Ex.A4-MVI report column No.17 shows driver of the tractor did not produce driving license and the bike is not even put to inspection by the MVI, but for the tractor, there are no damages caused to the tractor from the MVI report. Thus, it can be safely be taken including from the cross examination suggestions to PWs.2 and 3 of the accident was from the contribution of the deceased also if not as suggested total negligence of the deceased in touching the tractor and fell down and implicated. Thereby what the Tribunal held the total negligence of the driver of the tractor as untenable saying from the size of the vehicle, it is to apportion 25% on the bike rider and to

make the respondents liable to 75% as per the expression of the Apex Court in **Municipal Corporation of Greater Bombay Vs. Laxman Iyer and Another**¹.

Coming to the quantum, the deceased shows aged about 31 years, for persons aged between 30-35 multiplier '16' applicable for the claim under Section 166 MV Act as per **Sarla Verma v Delhi Transport Corporation**² and the earnings of the deceased as on the date of accident of 2007, can be taken following the guidelines from the Apex Court in **Latha Wadhwa vs. State of Bihar**³ of minimum Rs.3,000/- to be taken and it is just to take Rs.3,600/- per month and if 1/4th deducted towards personal expenses of the deceased that comes to Rs.2,700/-x12x16=Rs.5,18,400 + Rs.50,000/- towards loss of consortium to the wife of the deceased, Rs.25,000/- towards funeral expenses, Rs.10,000/- loss of estate and Rs.20,000/- care and guidance to the minor children which comes to Rs.6,23,400/-x70/100=Rs.4,36,380/- is the just compensation to enhance from Rs.2,88,800/-.

Accordingly and in the result, the appeal is partly allowed by enhancing the compensation from Rs.2,88,800/- to Rs.4,36,400/- with rate of interest @ 7.5% per annum. In other aspects the award of the Tribunal holds good.

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

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 16.11.2016
ska

¹ (2003) 8 SCC 731

² 2009 ACJ 1298.

³ (2001) 8 SCC 197=AIR 2001 (SC) 3218