HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

MACMA Nos. 4997 of 2008 & 1316 of 2009

COMMON JUDGMENT :

For the death of one G.Ramalingeswara Rao while proceeding on his bike bearing No.AP 16 AL 9383 on 04.03.2005 at about 5.00 P.M at Bandar Road from the opposite coming DCM van bearing No.AP 07 4917 claimed dashed, outcome of the injuries there from breathed last on 19.04.2005 at Nagarjuna Hospital, Kanuru near Vijayawada, vide Crime No.91/2005 for the offence under Section 304-A I.P.C against the D.C.M van driver, the claim was for Rs.15,00,000/- maintained originally under Section 163-A of the Motor Vehicles Act and later amended to Section 166 of the Motor Vehicles Act by the wife, two minor children and mother of the deceased against the respondents 1 and 2, owner and insurer of said D.C.M van. The Tribunal after appreciation of evidence on record that P.Ws 1 and 2 including eye witness with reference to Exs.A-1 to A-14 and from Ex.B-1 policy marked by consent awarded compensation of Rs.12,33,000/- with interest at 7.5% p.a. on 20.08.2008 in O.P. No.201 of 2005.

2) It is impugning the said compensation as excessive and also the Tribunal not fixed any contributory negligence on

the part of the deceased bike rider, while proceeding in opposite direction, insurer maintained the appeal in M.A.C.M.A. No.4997 of 2008 and later impugning said compensation as utterly low, claimants maintained the appeal in M.A.C.M.A. No.1316 of 2009.

3) Heard both sides at length and perused the material on record in support of their respective rival contentions.

4) The claimants are four in number, all dependants on the deceased, a Transco employee with a gross salary of Rs.9,552/- and net salary shows Rs.2,598/- as there are several deductions from the loans, he incurred at Rs.6,954/- per month, as can be seen from Ex.A-5 salary certificate and his age was from Ex.A-13 driving licence for date of birth vis-à-vis Ex.A-2 post mortem certificate and inquest report, as 33 years. The multiplier applicable for a person aged between 30 to 35 years as 16 as per Sarla Verma v Delhi Transport Corporation[1], but the Tribunal taken multiplier 15 only instead of 16. The Tribunal deducted 1/3rd towards personal expenses, whereas it is to be deducted 1/4th as four dependants from the expression supra. Even, the prospective earnings also to be taken into consideration from the above expression from his age, 50% and it is from the salary certificate shows what is the contribution by the deceased as

[1] 2009 ACJ 1298.

on the date of accident is from net salary of Rs.2,598/- per month for the deductions are for several loans incurred though for short and long durations respectively, thereby even taken with prospective earnings to the contribution by the deceased in all of Rs.10,000/- per month instead of what the Tribunal taken Rs.13,422/- on some hypothesis with no basis, including by given concession to the Income Tax deduction in so arriving the amount of Rs.10,000/- per month, it comes to Rs.14,40,000/- (Rs.7,500 x 12 x 16). Apart from that a sum of Rs.50,000/- towards loss of consortium, Rs.25,000/- towards funereal expenses, Rs.10,000/- towards loss of estate and Rs.20,000/- towards care and guidance to the minor children, it comes to Rs.15,45,000/- rounded to Rs.15,50,000/- is the just compensation the claimants are entitled.

<u>M.A.C.M.A.No.4997 of 2008:</u>

5) In the result, the appeal is dismissed.

<u>M.A.C.M.A.No.1316 of 2009:</u>

6) In the result, the appeal is allowed by enhancing the compensation from Rs.12,33,000/- to Rs.15,50,000/- subject to payment of deficit Court fee on Rs.50,000/- without which the decree cannot be executed. Rest of the terms of the award of the Tribunal holds good.

7) There shall be no order as to costs. Pending miscellaneous petitions, if any, in both the appeals shall stand cancelled.

Dr. B. SIVA SANKARA RAO, J

01.09.2016
ksh