

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.173 of 2010

JUDGMENT:

The 3 claimants, who are no other than the wife and 2 minor children of deceased Linganna shown aged as if 34 years maintained the claim under Section 166 of Motor Vehicles Act (for short 'the Act') for a compensation of Rs.3,00,000/- against the owner and insurer of the auto bearing No.AP-22/B-T/R-6921, with averments of the 1st claimant and her husband were coming from Dharoor to Gadwal to purchase sundry articles, having get down the bus at Dharoormett and started walking towards market, at that time the driver of the auto in rash and negligent manner while coming from behind dashed against Linganna, from which he sustained fatal injuries and was succumbed within 4 days on 04.07.2004 while undergoing treatment in Government Hospital, Kurnool and thereby they are entitled to the compensation and after contest by the respondents, the Tribunal having held the accident was the result of the rash and negligent driving of the driver of the auto of the 1st respondent insured with 2nd respondent in fixing joint liability arrived at a compensation of Rs.1,47,000/- with interest @ 7.5% per annum vide order dated 23.04.2008 in O.P.No.772 of 2005 on the file of Motor Accidents Claims Tribunal-cum-III Additional District Judge, Mahabubnagar at Gadwal. Impugning said compensation as utterly low, the claimants maintained the appeal.

Learned counsel for the appellants/claimants submits that the Tribunal gravely erred in taking the age of the deceased as 60 years without basis and other evidence shows the deceased was

30-35 years and the multiplier arrived is '8' and the earnings of the deceased taken utterly low and he possesses 12 acres and odd of land proved by revenue title deed Ex.A7, hence to award the compensation as prayed for.

Whereas it is the submission of the learned counsel for the 2nd respondent insurer that there is nothing to interfere with the award, but for no cross objections to exonerate the insurer from no valid driving license that is even proved before the Tribunal not properly appreciated, hence to dismiss the appeal.

Heard and perused the material on record.

A perusal of the evidence on record appreciated by the lower Court in relation to issue No.1, the accident was result of the rash and negligent driving of the driver of the auto of the 1st respondent insured with 2nd respondent in fixing liability against them, no way requires interference, but for the contest is on the quantum of compensation is utterly low if so what is the just compensation to fix.

Though it is the one of the contentions in the grounds of appeal from the Ex.A4-PM report showing the age of the deceased about 34 years, in fact PW.1-Timmappa deposed in his evidence on behalf of the claimants particularly at the cross examination dated 29.02.2008 that their father (deceased) at the time accident aged between 60-65 years and denied the suggestion because of old age of his parents, they come in contact with the auto without noticing properly in crossing the road for no fault of the auto driver and succumbed to the injuries by fall. Thus, it is clear that the

deceased was aged about 60 years as on the date of accident of categorical admission of one of the claimants no other than PW.1 and there is no need to set aside the finding of the Tribunal in taking age about 60 years. No doubt as per schedule of the Act under Section 166 for a compensation of Rs.3,00,000/- as per **Sarla Verma v Delhi Transport Corporation**¹ for persons aged between 56-60 years multiplier '9' and 61-65 years multiplier '7' and the Tribunal taken multiplier '8' rightly that no way requires interference.

Coming to the earnings of the deceased, the claimants placed reliance on Ex.A7 so called revenue title deed of deceased and Ac.12.6 guntas of land. There is suggestion that the lands are fallow and there are no revenue records and the land shown in the pattadar passbook kept fallow and his father was not doing any cultivation. In fact, a perusal of Ex.A7 clearly shows there are interpolations including the name of the person in whose name originally issued and it was shown Venkatanna S/o Gundanna was the pattadar. Whereas it is stricken off more than one place by incorporating Linganna S/o. Bodanna, without even father's name. There is no other scrap of paper much less revenue record to show much less the deceased cultivated the land shown and there are interpolations in the revenue title deed of Ac.12.6 guntas. Thus, there is nothing to consider the same and even taken consideration. Once the property succeeded by legal heirs, what the loss is only supervisory loss from death by person, leave about the suggestion that the lands are fallow with no cultivation and with no supervision and even in the absence of any avocation as

¹ 2009 ACJ 1298.

laid down in **Latha Wadhwa vs. State of Bihar**² a minimum of Rs.3,000/- per month to be taken and the expression is in the year 2001 and accident was dated 30.06.2004, it is just to take the earnings of the deceased at Rs.3,300/- per month. The claimants are 3 in number if 1/3rd deducted towards personal expenses, it comes to Rs.2,200/-x12x8=Rs.2,11,200/- + 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, which comes to Rs.2,96,200/- and as the record shows he undergone treatment from the date of accident till date of his death on 04.07.2004 and Rs.3,800/- towards medical expenses and attendant charges even can be granted to make Rs.3,00,000/- as prayed for, to enhance from Rs.1,47,000/-.

Accordingly and in the result, the appeal is allowed by enhancing the compensation from Rs.1,47,000/- to Rs.3,00,000/- with interest @ 7.5% per annum. Rest of the award holds good.

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

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 17.11.2016
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² (2001) 8 SCC 197=AIR 2001 (SC) 3218