HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.2939 of 2005

AND

CROSS OBJECTIONS (SR) No.7654 OF 2006

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COMMON JUDGMENT:

The 2nd respondent—insurer among the two respondents including the owner of tipper lorry bearing No.AP 25 T 7677, in O.P. No.1170 of 2001 on the file of I Additional Motor Accidents Claims Tribunal, Nizamabad (for short 'the Tribunal') maintained by six claimants, who are wife, parents and three minor children of deceased by name Bayya Pothanna @ Akula Pothanna under Section 166 of Motor Vehicles Act, 1988 (for short 'M.V Act') for a compensation of Rs.6,00,000/-, for the accidental death of the deceased on 02.07.2001, in awarding compensation of Rs.4,42,500/- with interest at 9% per annum, maintained the appeal mainly on the quantum of compensation awarded by the Tribunal as excessive and exorbitant, so also the rate of interest at 9%per annum and to reduce the same in awarding just compensation.

2) It is the contention of the learned standing counsel for appellant—insurer that the Tribunal gravely erred in taking the earnings of the deceased and failed to see the claim petition filed under Section 166 of M.V Act and applied the schedule II under Section 163-A of M.V Act.

3) The claimants filed Cross objections contending that the quantum of compensation awarded by the Tribunal is utterly low and the Tribunal ought to have awarded compensation as prayed for, hence to allow the appeal.

4) Heard and perused the material on record.

5) As per the claim petition averments, on 02.07.2011 at about 6.30 pm, the deceased while riding the scooter from Nizamabad to Navipet along with on Vanjari Shanker—PW.2, the lorry driven by its driver of 1st

respondent in a rash and negligent manner, dashed against the scooter, as a result, the deceased sustained multiple injuries and died on the way to Nizamabad. PW.2—an eye witness to the incident also deposed the same fact and there is nothing in the cross examination but for suggesting that three persons were travelling on the scooter. The Tribunal, therefrom held that the accident was for no fault of the deceased scooterist but for rash and negligent driving of the driver of the lorry of the 1st respondent insured with second respondent. As per Ex.A2—post mortem report among Exs.A1 to A6 and PWs.1 to 3, the deceased was aged about 30 years, shown in the claim petition as if 25 years. The deceased was claimed to have been earning Rs.6,000/- per month as driver as well as agriculturist. However, there is no driving licence to say that he was the driver with driving knowledge much less any proof of his working as driver filed but for Exs.A5 and A6 xerox copy of pattadar pass books and even taken for arguments sake, there will be no loss of income from agriculture but for the loss of supervisory capacity.

6) It is there from the Tribunal taken the earnings of the injured at Rs.3,000/- per month and even as per ***Latha Wadhwa vs State of Bihar***[1] in the absence of proof of earnings the minimum earnings of the injured can be taken at Rs.3,000/- per month, there would be no question of taking any prospective earnings for there is no proof of avocation much less any future source of earnings by personal avocation or any skilled work. The claimants are six in number, who are all dependents on the deceased. As per the Apex Court's expression in ***Sarla Verma vs Delhi Transport Corporation***[2]***, at para Nos.32 to 33 reiterated in Reshma Kumar vs Madan Mohan***[3] and the subsequent expression of equal bench reiterated in ***Rajesh vs Rajbir Singh***[4]***,*** where the dependants are more than 3 and upto 6, the deduction towards personal expenses should be 1/4th. Thus, it is not 1/3rd as deducted by the Tribunal and 1/4th to be deducted towards personal expenses of the deceased. Thus, it comes to Rs.4,59,000/- (Rs.3,000/- X ¾ X 12 X 17). Apart from it, even taken Rs.50,000/- towards

loss of consortium, Rs.25,000/- towards funeral expenses, Rs.30,000/- towards care and guidance of three minor children, Rs.10,000/- towards loss of estate, it comes to Rs.5,74,000/-, which is the just compensation to award.

7) Coming to rate of interest, the Tribunal awarded interest at 9% per annum from the date of claim petition till the date of realization, which is highly excessive and exorbitant and liable to be reduced to 7.5% per annum from the date of appeal till the date of realisation as per the settled expressions of the Apex Court in ***TN Transport Vs. Raja Priya[5] and Rajesh (supra)***.

8) Accordingly and in the result, the appeal is partly allowed and the Cross Objections are partly allowed by enhancing the compensation from Rs.4,42,500/- (Rupees Four lakhs forty two thousand and five hundred only) to Rs.5,74,000/- (Rupees Five Lakhs seventy four thousand only) and by reducing the rate of interest from 9% per annum to 7.5% per annum from the date of appeal till realisation. In other respects the award of the Tribunal holds good. There is no order as to costs.

9) Consequently, miscellaneous petitions, if any pending in this Appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.15.07.2016
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[1] AIR 2009 SC 3218

[2] 2009 ACJ 1298

[3] 2013 ACJ 1253

[4] 2013 ACJ 1403

[5] 2005 (6) SCC 236