

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA.No.367 OF 2010

JUDGMENT :

The claimants are five in number including major sons, not dependants and major and minor two daughters besides wife and mother of the deceased – R.Radhakrishnaiah, maintained the claim under Section 166 of the Motor Vehicles Act (for short ' the Act') for Rs.5,00,000/- in O.P.No.213 of 2008 against the owner and insurer of the jeep bearing No.AP03 U 4241 with the averments that the deceased died on 28.06.2008 at about 05.30 AM while proceeding towards Somala Bus Stand on left side of road to have tea started from his house, the jeep coming due to rash and negligent manner, hit the left side road cause way, for which the jeep turned turtle and fell down on him from back side and caused his instantaneous death and that the deceased was selling milk by grazing three cows and getting income therefrom besides owning Ac.7.00 of land and earning in all Rs.6,000/- per month. The Tribunal from the contest having held that the accident was occurred due to rash and negligent driving of the driver of the jeep of the 1st respondent insured with the 2nd respondent, they are jointly and severally liable and awarded compensation of

Rs.2,09,000/- with interest @ 7.5% per annum.

Impugning the same, the present appeal is maintained.

Learned counsel for the appellants submits that the award of the Tribunal is unjust and that the Tribunal ought to have the compensation as prayed for, if not more in arriving just compensation and the multiplier arrived and multiplication taken are unjust. Learned counsel for the insurer submitted that the award of the Tribunal holds good and that there is nothing to interfere with the same. Hence, the appeal may be dismissed.

So far as the finding of the Tribunal on the manner of accident that due to rash and negligent driving of the driver of the jeep of the 1st respondent insured with the 2nd respondent and the deceased was a third party, no way required interference, but for on quantum. Coming to the quantum, the Tribunal rightly taken the age of the deceased from what PW.1 came to the witness box and deposed of 50 years and age of the mother of the deceased show above 71 years, the age of the deceased was taken 55 years and the multiplier for the claim under Section 166 of the Act, between 51 to 55 is '11' even taken above 51 years, though not 55 years and not '8' taken by the Tribunal. Among the five claimants, but for one other four are dependants and personal expenses

taken as $1/4^{\text{th}}$ and not $1/3^{\text{rd}}$ as deducted by the Tribunal.

Coming to the earnings of the deceased there is no scrap of paper regarding his avocation or owning of land or selling milk and earning any income therefrom. Thus, it is only by estimated income arrived at on the date of accident i.e. on 28.06.2008. As per decision of the Apex Court in **Latha Wadhwa v State of Bihar**¹ held that even there is no proof of income and earnings, it can be reasonably estimated minimum Rs.3,000/- per month. Therefore, from the accident, it is just to arrive the monthly earnings at Rs.3,600/- per month and after deducting $\frac{1}{4}$ taken towards personal expenses, which comes to (Rs.2700/- x 12) Rs.32,000/- x 11 = Rs.3,56,400/-, Rs.50,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of estate and Rs.10,000/- to the minor child. Thus, total compensation of Rs.4,51,400/- is the just compensation.

Accordingly, the appeal is allowed in part enhancing the compensation awarded by the Tribunal from Rs.2,09,000/- to Rs.4,51,400/-. In other aspects, the

¹ 2001(8) SC3218

award of the Tribunal holds good. There is no order as to costs.

As a sequel, miscellaneous petitions pending, if any, in the appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

07.11.2016
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