

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.2406 of 2006

JUDGMENT:

The claimants of O.P.No.487 of 2002 no other than wife, two minor children and major brother of the deceased maintained under Section 166 of the Motor Vehicles Act, for a compensation of Rs.8,00,000/- for the death of the deceased in the motor accident dated 03.03.2001, due to the rash and negligent driving of the driver of another jeep bearing No.MH 31H 1434 while travelling, the tribunal considering the evidence of PWs.1 to 3 and Exs.A1 to A7 awarded compensation of Rs.2,31,760/- with interest at 7.5% p.a. vide award dated 10.07.2006 and the appeal is maintained impugning the said compensation as utterly low against owner and insurer of the jeep supra.

2. Heard the learned counsel for the appellants/ claimants and the learned counsel for the insurer/ 2nd respondent and perused the material on record.

3. There is some ambiguity, no doubt, pointed out by the lower Court in not considering the evidence of PW.1, who categorically deposed by the date of accident of the deceased on 03.03.2001, the deceased was drawing a salary of Rs.5,118/- and his basic is Rs.3,370/- as on that day

because the documentary evidence exhibited of the certificate under Ex.A7 which discloses the appointment letter of 01.09.1998 of his basic Rs.975/- with increments Rs.25/- per year, maximum basic Rs.1,660/-, the tribunal there from taken Rs.1,540/- as the gross salary per month.

4. In fact, as per *Lata Wadhwa v. State of Bihar*¹, even in the absence of proof of earnings for the claim under Section 166 of the Act, minimum Rs.3,000/- to be taken. The deceased was a Government teacher. Though what PWs.1 to 3 deposed of gross salary of Rs.5,118/- is no basis, as per *Sarla Verma v. Delhi Transport Corporation*², the prospective earnings also to be taken into consideration from the age of 30 years with 50%increase. The minimum to be taken is Rs.3,000/- p.m and if the same is taken into consideration, after 1/3rd deduction towards personal expenses for the major brother is not dependent on the deceased but for wife and two children, it comes to Rs.2,000/- p.m. and with 50%increase is Rs.3,000/- p.m. that to be multiplied with multiplier '17', comes to Rs.6,12,000/- (Rs.3,000/- x 12 x 17). Apart from the same, Rs.50,000/- towards loss of consortium to the 1st claimant, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of estate and Rs.20,000/- towards care and guidance of

¹ AIR 2001 (SC) 3218

² 2009 ACJ 1298

minor children, in total, the just compensation comes to Rs.7,17,000/-.

5. Accordingly and in the result, the appeal is partly allowed by enhancing the compensation from Rs.2,31,760/- to Rs.7,17,000/- with interest at 7.5%p.a. from the date of petition till realization. There is no order as to costs.

6. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date:20.09.2016
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