

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.2887 OF 2005

JUDGMENT:

The appellant/claimant in O.P. No.411 of 2002 maintained the appeal against the driver, owner and insurer of lorry bearing No.AP 5 X 366, for the accidental death of her father Chitturi Peda Swamulu, aged about 53 years as per Ex.A2—post mortem report. On 03.02.2002, at about 11.30 am, while the deceased was proceeding on his bicycle to his village the lorry driven by respondent No.1 came in opposite direction in a rash and negligent manner and dashed against him due to which the deceased sustained multiple injuries and died on the spot. The appellant filed claim petition under Section 166 of M.V. Act, as sole legal heir, for compensation of Rs.1,50,000/- and after contest by the insurer (respondent No.3), for driver and owner remained exparte before the Tribunal, the Tribunal held that the accident was the result of rash and negligent driving of the lorry driver belongs to the respondent No.2 insured with respondent No.3 and awarded compensation of Rs.69,000/- with interest at 9% per annum vide award dated 02.06.2005 in O.P. No.411 of 2002 and impugning the said quantum as utterly low, the present appeal is maintained.

2) Heard learned counsel for claimant vis-à-vis learned standing counsel for insurer and perused the material on record.

3) The fact that the deceased was aged about 53 years is evident not only from Ex.A2—post mortem report but also from Ex.A3—MVI report and Ex.A1. The deceased left behind the claimant as married daughter and sole heir also not in dispute. It is also proved that the accident was the result of rash and negligent driving of the vehicle by respondent No.1.

4) Coming to the quantum of compensation, learned counsel

for the insurer contends from the expression of the Apex Court in ***Manjuri Bera vs Oriental Insurance Company Limited***^[1] that the married daughter is not a dependent, thereby she is not entitled to compensation and at best entitled to loss of estate. In fact, the law is fairly settled in saying when the claim is by several persons, among whom there are dependants and non—dependants, the compensation to be awarded is mainly to the dependants. It is also settled law from the Apex Court's expression in ***Sarla Verma vs Delhi Transport Corporation***^[2], particularly from para Nos.30 to 33 of what is criteria for personal expenses deduction is not based on number of the claimants but as to how many among them are the dependants on deceased. It is also clear therefrom of non-dependants are also entitled but for to decide how much the deceased could contribute on his life time to non-dependant legal heirs.

5) Thus, though the sole claimant is not a dependant, once she is a legal heir, as defined under the M.V Act and Rules read with the definition in C.P.C, she is entitled to compensation.

6) Having regard to the above, the appellant/ claimant is entitled to compensation.

7) Now coming to the quantum, the deceased was claimed as earning Rs.50/- per day as on the date of accident referred supra and the Tribunal awarded Rs.40/- per day and even by the Apex Court in ***Latha Wadhwa vs State of Bihar***^[3] in the absence of proof earnings Rs.3,000/- per month is to be taken including domestic contribution of house wife. Taking into consideration of these aspects and in view of the fact that the claimant is not a dependant being a sole heir, even taken Rs.750/- per month as half of Rs.1,500/- per month earnings of the deceased, for the sole legal heir contribution, the

multiplier applicable is '11' from the age of the deceased, it comes to Rs.99,000/-. Apart from it, Rs.10,000/- towards loss of estate, Rs.25,000/- towards funeral expenses vide **Rajesh vs Rajbir Singh**^[4]. In all, the claimant is entitled to Rs.1,34,000/-. However, the rate of interest awarded by the Tribunal is reduced from 9% per annum to 7.5% per annum.

8) Accordingly the appeal is partly allowed by enhancing the compensation from Rs.69,000/- (Rupees sixty nine thousand only) to Rs.1,34,000/- (Rupees one lakh thirty four thousand only) and reducing the rate of interest from 9% per annum to 7.5% per annum from the date of petition till the date of realisation. Rest of the terms of the award of the Tribunal holds good. There is no order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Dt.23.03.2016
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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- [\[1\]](#) 2007 ACJ 1279
- [\[2\]](#) 2009 ACJ 1298
- [\[3\]](#) AIR 2001 SC 3218
- [\[4\]](#) 2013 ACJ 1403