

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.2087 of 2005

JUDGMENT:

The appellants five in number are the wife, four minor children of the deceased by name, Saidulu, who died in the motor accident dated 18.03.2003 and they along with mother of the deceased as 6th claimant maintained O.P.No.431 of 2003 under Section 166 of the Motor Vehicles Act against the owner and insurer of the lorry bearing No.AP 15 U 4509 with the claim that while the deceased was proceeding on his bicycle, the crime lorry coming from behind in a rash and negligent manner dashed the bike, as a result of which he fell down and sustained multiple injuries and the claim covered by crime No.25/2003 under Section 304-A I.P.C. registered against the driver of the vehicle covered by Ex.A1 and the police after investigation filed the charge sheet under Ex.A6.Ex.A5 is the P.M.report showing the age of the deceased about 30 years. Against the claim of Rs.2,50,000/- the tribunal awarded the same amount with interest at 8% p.a. from the date of claim petition till the date of award and at 5% p.a. from the date of award till date of realization with joint liability against the respondents. Though the actual

compensation arrived by the tribunal is Rs.2,84,864/-, restricted the claim to Rs.2,50,000/- as claimed by the petitioners. Being not satisfied with the award of the tribunal, the claimants 1 to 5 preferred the appeal, since 6th claimant died.

The contentions of the learned counsel for the appellants are that the deceased was earning Rs.3,000/- p.m. whereas the tribunal considered only Rs.42/- per day and Rs.1,874/- p.m. and the multiplier adopted though not in dispute, the compensation arrived of Rs. 2,84,864/- is also less and ought to have been allowed the same and that the claimants are also entitled to other conventional sums.

As can be seen from the award of the tribunal, the amount arrived by the tribunal is 2,84,864/- and not beyond.

Whereas, it is the contention of the learned counsel for the 2nd respondent-insurer, there is nothing to interfere with the award of the tribunal, hence to dismiss the appeal.

Heard and perused the material on record.

There is no record produced before the tribunal regarding avocation of the earnings of the deceased. However, the tribunal from the evidence on record orally of PWs.1 and 2 including PW.1 wife of the deceased in

the claim in fact the tribunal taken avocation as toddy tapper , taken the earnings of the deceased as per G.O.Ms.No.23, Labour employment training & Factories (Lab-II) Department, dated 16-06-2000. Even taken there from earnings of the deceased to arrive at Rs.2,000/- p.m. and in all as on the date of accident dated 18.03.2003 and if $\frac{1}{4}^{\text{th}}$ is deducted towards personal expenses of the deceased (as the claimants are five in number), it comes to Rs.1,500/- and loss of dependency comes at Rs.1500x12x17 (the multiplier applicable from the age of the deceased as per **Sarla Verma v. Delhi Transport Corporation** is '17') =Rs.3,06,000/-. Apart from it, the petitioners are entitled to Rs.50,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of estate and Rs.30,000/- towards care and guidance to three minor children. Thus, in total it comes to Rs.4,20,000/-.

Accordingly, the appeal is allowed by enhancing compensation from Rs.2,50,000/- to Rs.4,20,000/-, subject to payment of deficit court fee over and above Rs.2,50,000/- already paid under Rule 475 of A.P.M.V.Rules before the tribunal within one month from the date of receipt of a copy of the judgment. The entitlement of interest is at 7.5% p.a. on the original amount of Rs.2,50,000/- arrived by the tribunal till the

date of appeal from the date of claim petition and on the enhanced amount from the date of appeal till the date of realisation. In other respects, the award of the tribunal holds good. Remedy is left open to move the tribunal for any withdrawal of compensation.

The claimants/appellants are not entitled to execute decree without payment of deficit court fee. There is no order as to costs.

Miscellaneous petitions, pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:23-03-2016

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