HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.922 of 2005

JUDGMENT:

The appellants no other than parents of deceased Shiva Sandeep Kumar, filed this appeal having been aggrieved by the Order/Award of the Motor Accidents Claims Tribunal-cum- District Judge, Nizamabad (for short, 'Tribunal') in O.P.No.609 of 2002 dated 20.12.2004 awarding compensation of Rs.1,55,480/- with interest at 9% per annum as against the claim of Rs.10,00,000/- for the death of Shiva Sandeep Kumar, filed under Section 166 of the Motor Vehicle Act, 1988 (for short, 'the Act'). Impugning the compensation awarded by the Tribunal as utterly low, the present appeal is filed.

2) Heard learned counsel for appellants vis-à-vis learned standing counsel for insurer. Respondent No.1—owner of the lorry even served failed to attend hence taken as heard. Perused the material on record.

3) The brief averments of the claim petition are that on 05.09.2001 at about 9.00 am, the deceased Shiva Sandeep Kumar, aged about 16 years as per Ex.A4—post mortem report, was proceeding on the scooter bearing No.AP 23 B 2170 as pillion rider along with his relative. When they reached besides Venkateshwara Swamy Temple, one lorry bearing No.AP 16 V 6944 of 1st respondent insured with 2nd respondent covered by Ex.B1 policy, came in a rash and negligent manner and dashed the scooter, as a result of which the pillion rider fell down and breathed the last due to the head injury from the fall;

4) A perusal of the record would show that from Exs.A3 & A4—charge sheet and post mortem report respectively coupled with the evidence of PWs.1 to 3 including eye witness, it was established that the accident occurred due to rash and negligent driving of the lorry driver—1st respondent supra; and the Tribunal having held that the accident was the result of negligent driving of lorry driver but no fault on the scooterist and by

estimating the earnings of the deceased at Rs.15,000/- per annum as per 2nd schedule of M.V. Act and after deducting 1/3rd therefrom arrived at a compensation Rs.1,55,480/- with interest at 9% per annum. The present appeal is filed impugning the same, with contest that the Tribunal ought to have taken the income of the deceased at Rs.15,000/- per month by doing business and agriculture. There is no proof of any source of doing business in the name of deceased or any business in his name to say owner of any business much less any tax return, income of him. Among Exs.A1 to A11, Ex.A5—No objection certificate no way proves the case much less No Objection Certificate issued by the Commissioner, Medak Municipality to run the Shiva Mills that does not mean deceased was running the shop. Though what the Tribunal assessed the income of the deceased at Rs.15,000/- per annum is utterly low more particularly from the expression of the ***Latha Wadhwa vs State of Bihar***[1] in the absence of proof of earnings, minimum of Rs.3,000/- is to be taken. As per the expression of the Apex Court in ***Kishan Gopal vs Lala***[2] at page No.257, para No.39, it was observed that Rs.15,000/- provided in the schedule of the Act to be read as Rs.30,000/-. As the age of the deceased is 16 years and unmarried from Ex.A4—post mortem report, half to be deducted towards personal expenses, it comes to Rs.15,000/- per annum. As the age of the mother of the deceased is 40 years, the multiplier applicable is '14' as per ***Sarla Verma vs Delhi Transport Corporation***[3] and when the same is applied, the loss of earnings comes to Rs.2,10,000/-. Apart from it, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of estate can be granted as per the Apex Court expression in **Rajesh vs Rajbir Singh**[4], in all it comes to Rs.2,45,000/-, which is the just compensation. So far as the rate of interest is concerned, 9% per annum is excessive and therefore it is reduced to 7.5% per annum vide **Rajesh** (supra).

5) Accordingly and in the result, the appeal is partly allowed by enhancing the compensation from Rs.1,55,480/- (Rupees one lakh fifty

thousand four hundred eighty only) to Rs.2,45,000/- (Rupees two lakhs forty five thousand only) and reducing the rate of interest from 9% per annum at 7.5% per annum from the date of petition till realisation. Rest of the terms of the Award holds good. No order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Dt.13.04.2016
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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M.A.C.M.A. No.922 of 2005

Date:13.04.2016

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[1] AIR 2001 SC 3218

[2] 2014 (1) SCC 244

[3] 2009 ACJ 1298

[4] 2013 ACJ 1403