HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.1080 OF 2009

JUDGMENT:

The claimants 1 to 4 no other than wife, major son not a dependant, minor son and mother of deceased Kishan, aged about 46 years, Ex.A-6 post mortem report maintained O.P. No.429 of 2006 under Section 166 of the Motor Vehicles Act for a claim of Rs.17,00,000/- for the motor accident resulting his death on 24.11.2006 in maintaining the claim against the owner and insurer of the vehicle bearing No.AP 16 W 6388, saying while the deceased was proceeding on the auto AP 23 T 5658 at Rudraram outskirts on N.H-9, driver of the bus dashed the auto resulting his death. The auto owner and insurer, no doubt, not made as parties in the claim petition, the deceased was claimed working as technician in HFC Limited, Hyderabad on a gross salary of Rs.11,836.45 Ps as per evidence of P.W-3, co-employee of deceased covered by Exs.X-1 to X-5 showing Ex.X-3 salary certificate in proof of it and the Tribunal awarded compensation of Rs.8,09,048/- with interest at 7.5% p.a. against the respondents 1 and 2 with joint liability and impugning the same the appeal is filed by the claimants. The learned counsel for the appellant died and even notices sent returned, whereabouts of claimants are not known, this Court with no option constrained to appoint Sri B.Parameswara Rao, Advocate as legal aid counsel vide order dated 28.01.2016, pursuant to which heard the learned counsel for the appellants supra and the learned counsel for the insurer and perused the material on record.

2) Though it is one of the contentions of the learned counsel for the insurer of there is a contribution from the auto driver also by left open to make a claim for apportionment against the auto driver, if the insurer 2nd respondent is able to show the contribution of the auto also as per the three Judge bench expression of the Apex Court in ***khenyei***

v. New India Assurance Company Limited*[1]** and a perusal of the gross salary certificate and there are some loans availed by him and even as per ***Sarla Verma v Delhi Transport Corporation*[2]** the Court is also has to take consideration prospective earnings and Court is bound to deduct professional tax and other compulsory deductions besides income tax deduction, even there from taken Rs.11,836/- p.m. If 1/3rd deducted personal expenses it comes to Rs.7,891/- p.m. and the multiplier as per the age of the deceased 40 years, is 14.5 as referred supra and as per the expression in ***Sarla Verma supra, it comes to Rs.13,73,034/- (7891x12x14.5) besides loss of consortium to 1st claimant Rs.1,00,000/-, minor child Rs.10,000/-, total comes to Rs.15,18,034/- rounded to Rs.15,18,000/- is the compensation to enhance from Rs.8,09,048/-.

3) In the result, the appeal is partly allowed enhancing the compensation from Rs.8,09,048/- to Rs.15,18,000/-. Rest of the terms of the award of the Tribunal holds good. There is no order as to costs. Miscellaneous petitions pending, if any, in this appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 05-02-2016
ksh

[1] (2015)9 SCC 273
[2] 2009 ACJ 1298.