HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.Nos.222 and 1333 of 2010

COMMON JUDGMENT:

The claimants, no other than husband and two major sons of the deceased by name, G.Prameela, aged about 35 years as per Ex.A3-Post Mortem Report of the claim maintained under Section 166 of the Motor Vehicles Act (for short 'the Act'), for a compensation of Rs.15,00,000/-, against the owner and insurer of the lorry bearing No.AS 01 G 6639, from the contest by the 2nd respondent-insurer from the 1st respondent-owner remained ex parte in the claim petition and from the evidence of PWs.1 to 3, Exs.A1 to A8 and Ex.B1-policy, arrived a compensation of Rs.5,82,000/- with interest at 9% p.a. on 19.08.2008 in M.V.O.P.No.172 of 2005 and impugning the same, the claimants filed appeal in MACMA No.1333 of 2010 saying the compensation awarded is utterly low and the insurer filed appeal in MACMA No.222 of 2010, saying the compensation awarded is exorbitant to reduce.

2. Heard both sides at length and perused the entire material on record.

3. The point involved in these appeals is only to decide what is the just compensation. There is no proof regarding the earnings of the deceased. The evidence on record including that of PW.1-husband of the deceased that his wife was also assisting him in

running a small or petty provisions store. It is clear from perusal of the photos covered by Ex.A7 that it is not even a fully provisions store, a kanche laid to a building on a side near to the road and it is a thatched shed and the same was damaged. There is nothing to show from any evidence on record the existence of provision shop with R.C. license much less payment of any property tax either by PW.1 or by his deceased wife. The claim for compensation is that the deceased was earning at Rs.500/- per day. If it is really a provision shop, the income to be taken into consideration is on average monthly basis but not annual, and not daily earnings for not a case of she is a daily worker in any shop. As per Lata Wadhwa v. State of Bihar[1], in the absence of proof of earnings, minimum Rs.3,000/- to be taken into consideration and the accident was in September, 2004 after three years of the expression, earnings of the deceased can be taken at Rs.3,500/- p.m. If 1/3rd is deducted towards personal expenses of the deceased, it comes to Rs.2,333/- p.m. and Rs.28,000/- p.a. and the same is multiplied with the multiplier '16' (applicable from the age of the deceased), it comes to Rs.4,48,000/-. Apart from the same, the claimants are entitled to Rs.6,000/- towards damages to the thatched shed, Rs.50,000/- towards loss of consortium, Rs.10,000/- towards loss of estate and Rs.25,000/- towards funeral expenses. Thus, in total Rs.5,39,000/- is the just compensation to reduce from Rs.5,82,000/- to Rs.5,39,000/-.

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[1] AIR 2001 (SC) 3218

4. A perusal of the policy shows that the third party damage is only Rs.6,000/- since no additional premium paid even any amount awarded against owner and even from Ex.A7-photos for no credence to be attached to Ex.A7 estimation, the compensation that to be awarded maximum is Rs.20,000/- and out of that Rs.14,000/- additionally and personally being liable by the 1st respondent-owner of the vehicle, then it comes to Rs.5,53,000/- and rate of interest to be reduced from 9% to 7.5% p.a.

5. Accordingly, MACMA No.1333 of 2010 is dismissed and MACMA No.222 of 2010 is partly allowed. It is made clear that out of the compensation awarded Rs.5,53,000/-, Rs.14,000/- is personally liable by the 1st respondent-owner out of the damages of Rs.20,000/- and the remaining from the joint liability, the insurer has to pay, failing which the claimants can execute and recover. In other respects, the award of the tribunal holds good. No order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Date:25.10.2016
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