

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.402 of 2010

JUDGMENT:

The appellants are the claimants, five in number, no other than wife, minor child, parents and unmarried sister of the deceased-K.Dasharatha, aged about 26 years as per Ex.A6-Post Mortem Report, maintained the claim in MVOP No.454 of 2006 under Section 166 of the Motor Vehicles Act (for short 'the Act'), for a compensation of Rs.10,00,000/-, against the owner and insurer of the lorry bearing No.AP 04V 2106, with averments that the deceased doing catering service; on 17.03.2006 while he was proceeding on his scooter from Kushaiguda towards Kavadiguda, at Neredmet, due to the rash and negligent driving of the driver of the lorry of the 1st respondent dashed the deceased from behind and helmet broken into pieces and he was succumbed due to head injury at the spot vide crime No.76 of 2006 and Exs.A1-FIR, A2-Charge sheet and A4-scene of offence panchanama also describes the same. Thereby so far as that finding of the tribunal of accident was the outcome of rash and negligent driving of the lorry driver of the 1st respondent, insured with the 2nd respondent concerned, there is nothing to interfere.

2. Coming to the quantum of compensation, it was claimed that the deceased was earning Rs.10,000/- to Rs.15,000/- p.m. and PW.4 claimed as cook under the deceased stating he was paying salary of Rs.5,000/- p.m. The tribunal there from taken the earnings of the deceased at Rs.4,000/- p.m. as on the date of accident i.e., 17.03.2006 and awarded Rs.5,55,670/- with interest at 7.5%p.a. Admittedly, there is no evidence filed with regard to the avocation of the deceased.

3. In *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 about six years after the expression, the earnings of the deceased can be taken at Rs.3,600/- p.m. If 1/4th is deducted towards personal expenses of the deceased (as the claimants are four in number other than sister, who is not dependent), it comes to Rs.2,700/- p.m. and Rs.32,400/- p.a. and the same is multiplied with the multiplier '17' (applicable from the age of the deceased as per *Sarla Verma v. Delhi Transport Corporation*²), it comes to Rs.5,50,800/-. Apart from the same, the claimants are entitled to Rs.50,000/- towards loss of consortium, Rs.10,000/- towards loss of estate, Rs.10,000/- towards care and guidance to the minor child and Rs.25,000/-

¹ AIR 2001 (SC) 3218

² 2009 ACJ 1298

towards funeral expenses. Thus, in total Rs.6,45,800/- rounded to Rs.6,46,000/- is the just compensation.

4. Accordingly and in the result, the appeal is partly allowed by enhancing the compensation from Rs.5,55,670/- to Rs.6,46,000/-. Rest of the terms of the award of the Tribunal holds good. There is no order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Date:23.11.2016
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