

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A No.1776 OF 2010

JUDGMENT:

The claimants are none other than wife and two minor children and 4th respondent is mother of deceased Pothuganti Anji Babu maintained M.V.O.P. No.480 of 2009 on the file of Motor Accidents Claims Tribunal-cum-Principal District Judge, Ongole, (for short 'the Tribunal') against four respondents viz., driver, owner and insurer of the auto bearing No.27 U 9191 including 4th respondent—mother of deceased, under Section 166 of Motor Vehicles Act, 1988 (for short 'the M.V.Act') for a compensation of Rs.20,00,000/- for the accidental death on 03.11.2008 of deceased by name P.Anji Babu, aged about 34 years as per Ex.A-20—post mortem report and as per Ex.A1—SSC certificate born on 08.04.1996 and the accident was dated 03.11.2008 to say that he completed 32 years as on the date of accident. From the contest of 3rd respondent—insurer contested the claim stating that the deceased sustained injuries out of his own fault for no involvement of the offending auto and for no fault of the auto driver, the respondents cannot be made liable to the claim but for to proceed against owner and insurer of motor cycle riding by the deceased and he has no valid driving licence, even the driver of auto also has no driving licence, the owner and insurer of the motor cycle of the deceased are the necessary parties to be impleaded to the claim and that the claim is excessive and exorbitant. It is from the pleading and from the evidence of PW.1 including PW.2—eye witness and Exs.A1 to A22, Ex.A21—charge sheet filed against 1st respondent—driver of the auto, the Tribunal having held that the accident was the result of rash and negligent driving of auto driver, awarded a compensation of Rs.11,31,000/- with interest at 7.5% per annum from the date of petition till realisation with joint

liability against respondents 1 to 3. It is impugning the quantum of compensation as utterly low, the claimants preferred the present appeal.

2) Heard learned counsel for the appellants—claimants and learned standing counsel for 3rd respondent—insurer. Perused the material on record.

3) So far as manner of accident is concerned, while the deceased was proceeding on his motor cycle bearing No.AP 27 N 6938, when he reached near the weighing kata of one Surapalli Hanumantharao, near Chimakurthy, the offending auto bearing No.AP 27 U 9191 driven by the 1st respondent belonging to 2nd respondent and insured with 3rd respondent came in an opposite direction and in a rash and negligent manner at high speed dashed the motor cycle, as a result, the deceased fell down and sustained injuries and became unconscious and he was shifted to Government Hospital Ongole and therefrom he was shifted to Hi-tech Trauma and Critical Care Hospital, Amaravathi Road, Guntur and the police, Arundelpet Police, Guntur registered the crime No.145 of 2008 and while undergoing treatment on 11.11.2008, he succumbed to injuries having spent nearly Rs.25,000/- towards treatment.

4) The Tribunal disbelieved the evidence of PW.1 and Ex.A5—salary certificate from no proof as to the date of appointment and the particulars of the service of the deceased and proof regarding in payment of amount but for filing a certificate, however, taken into consideration from the contest that he was drawing Rs.7,000/- per month and having so arrived taken Rs.8,000/- per month as reasonable and if 1/4th deducted towards personal expenses as the dependants are four in number as per the expression of the Apex Court in **Sarla**

Verma vs Delhi Transport Corporation¹, once the Tribunal did not believe the employment and there is no worth evidence from PW.3 much less to prove Ex.P5, and what the Tribunal arrived at Rs.8,000/- by assessing from the quantification of service in mines and from the age of the deceased above 32 years, in saying the earning capacity, it may not require any interference, much less to increase further prospective earnings from Rs.8,000/- taken by the Tribunal, but for to say instead of 1/3rd, 1/4th to be deducted towards personal expenses, by applying the appropriate multiplier '16', it comes to Rs.11,52,000 (Rs.6,000/- X 12 X 16). Apart from it, the claimants and respondent No.4 are entitled to Rs.50,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of estate, Rs.20,000/- towards care and guidance to the minor children, in all it comes to Rs.12,57,000/- is the just compensation.

5) Accordingly and in the result, the appeal is partly allowed by enhancing the compensation from Rs.11,31,000/- (Rupees eleven lakhs thirty one thousand only) to Rs.12,57,000/- (Rupees twelve lakhs fifty seven thousand only) with interest at 7.5% per annum from the date of petition till realisation. In other respects the award of the Tribunal holds good. No order as to costs.

Consequently, Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.14.12.2016
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¹ 2009 ACJ 1298