

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.734 of 2010

JUDGMENT:

The claimants in M.V.O.P.No.454 of 2008, no other than parents of deceased by name G.Srinu, aged about 16 years as per the Post Mortem Report-Ex.A3 of the claim maintained for Rs.5,00,000/- under Section 166 of the Motor Vehicles Act (for short 'the Act'), against the owner and insurer of the bus bearing No.OR 07/ D-2448, from the contest by the insurer-2nd respondent for 1st respondent remained ex parte before the tribunal, what the tribunal awarded of Rs.1,40,000/- with interest at 7.5%p.a. on 04.01.2010, impugning the said quantum as utterly low maintained the appeal.

2. Heard the learned counsel for the claimants and the learned Standing Counsel for the insurer-2nd respondent, for 1st respondent owner of the bus did not choose to appear, even served in appeal and perused the material on record.

3. The contentions in the grounds of appeal vis-à-vis oral submissions of learned counsel for the claimants are that the tribunal ought to have awarded compensation as prayed for and went wrong in not considering the income of the deceased working as mason of Rs.150/- per day and multiplier arrived and multiplicand applied are wrong, hence to allow the claim.

4. Whereas, it is the submission of the learned counsel for the insurer that the award of the tribunal holds good and there is nothing to interfere with the award of the tribunal. Perused the material on record.

5. The fact that the accident was the result of rash and negligent driving of the driver of the bus of the 1st respondent insured with the 2nd respondent proved from the evidence before the tribunal is not in dispute apart from no cross objections even though otherwise the finding can be impugned, from the fact of the deceased boy was going on his cycle to Tekkalipatnam at about 9.30 a.m. due to the rash and negligent driving of the driver of the bus, the deceased was run over. Ex.A1-FIR and Ex.A5-charge sheet are against the said driver for his rash and negligent driving and Motor Vehicle Inspector's report also shows the accident was not due to any mechanical defects. Ex.A3-Post Mortem Report shows that the deceased died due to multiple injuries including fractures to substantiate the fact that the accident was the sheer negligence of the bus driver.

6. Now, coming to the quantum of compensation, the tribunal taken the age of the parents, who are dependents on the deceased during their life time in adopting the multiplier. However, the multiplier adopted by the tribunal at '13' is not

correct as it is '15' that applies from the age between 38 to 40 years.

7. Coming to the earnings of the deceased, even taken the deceased is not an earning member for no proof of doing masonry work, from his age of 16 years even otherwise can earn, the minimum earnings to be taken as per Schedule II of the Motor vehicles Act of Rs.15,000/- p.a. to be read as Rs.30,000/- p.a. vide Kishan Gopal Vs Lala¹. If the same is taken into consideration and half of the amount is deducted towards personal expenses of the deceased, it comes to Rs.15,000/- and loss of dependency comes at Rs.15,000/-x15 =Rs.2,25,000/-. Apart from it, the petitioners are entitled to Rs.35,000/- towards loss of estate and funeral expenses. Thus, in total it comes to Rs.2,60,000/-.

8. Accordingly, the appeal is partly allowed by enhancing the compensation from Rs.1,40,000/- to Rs.2,60,000/- In other respects, the award of the tribunal holds good. There is no order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Date:04.01.2017
pab

¹ 2014(1)SCC-244)