

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.M.A.No.2771 of 2004

JUDGMENT:

The appellant-claimant by showing her mother-in-law as co-respondent filed the M.V.O.P.No.138 of 2003 for death of her husband Manohar Reddy, who is one of the inmates of the passenger jeep bearing No.AP21 V 4061, against the owner and insurer of the lorry bearing No.KA-05-9093; under Section 166 of Motor Vehicle Act, 1988 (for short" the Act') for compensation of Rs.11.00 lakhs and from contest by the 2nd respondent-insurer for the first responden-owner of the lorry remained exparte, arrived to the conclusion of the accident was the result of opposite going lorry driver of the respondent, awarded a compensation of Rs.6,31,930/- with interest at 9% per annum. Impugning the same as utterly low, the claimant preferred the appeal by showing her mother-in-law is third respondent and the contesting insurer of the lorry as second respondent and the lorry owner as first respondent. The appeal against the first respondent though 'ended' in dismissal for default not fatal for remained exparte before the Tribunal vide **Meka Chakradhara Rao v. Yelubandi Babu Rao @ Reddemma and others.**

2. The contentions in the grounds of appeal as well as oral submissions of learned counsel for the appellant-claimant are that the award of the Tribunal is contrary to law and the compensation awarded is utterly low, the multiplier arrived, so also, the multiplicand are required to be enhanced and hence to allow the appeal as prayed for.

3. Whereas, it is the contention of learned counsel for the second respondent insurer that, but for no cross-objections to reduce, what the Tribunal awarded of Rs.6,31,930/- no way require to reduce, that there is a contributory negligence on the part of the driver of the jeep, where the deceased among others were travelling with over-loading and the Tribunal was not right in not fixing the contributory negligence of jeep driver, that the finding of the Tribunal can be attacked without any cross-objections for opposing the appeal claim for enhancement and also regarding the rate of interest awarded at 9% per annum requires to reduce to 7.5% per annum being excessive, hence to dismiss the appeal by confirming

the quantum of compensation and by reducing the rate of interest.

4. Perused the material on record. The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in the appeal.

5. Now the points for consideration are:

- i. Whether the compensation awarded by the Tribunal is utterly low to enhance and there is contributory negligence and the rate of interest is excessive and if so, with what observations?
- ii. To what result?

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POINT No.1:

6. The very First Information Report (FIR) issued by father-in-law of the deceased who is none other than one of the inmates of the jeep is crystal clear particularly from page No.5 of Ex.A.1 FIR placed reliance upon by the claimant that the accident was resulted on the National High way No.7 at Beechupalli, when the jeep and the so-called crime lorry were proceeding in opposite direction and the lorry left side portion dashed the jeep right side portion. The same shows but for contribution by jeep driver also, the accident could not be the outcome. No doubt, pursuant to Ex.A-1 FIR, the police filed Ex.A.2 charge sheet against the lorry driver. None of the parties filed the MVI report and scene observation report which are the material documents to determine the extent of the contributory negligence. Against the oral evidence of the other injured inmates of the jeep PWs 2 and 3 in the common award of the several claims of injured and deceased before the Tribunal and also by another witness PW.4, there is evidence of RW.1 the driver of the lorry. The evidence of Pws 2 and 3 on one hand and RW.1 on the other hand are that the accident was the result of sheer negligence of jeep driver as per RW.1 and of sheer negligence of lorry driver as per Pws 2 and 3, but for to say by said evidence, the admission in F.I.R could not be given go bye. The fact of deceased's right shoulder was cut-off in the accident, also appears that he sat on the rear right side portion of the jeep. Having regard to the above, this is a fit case to hold that there is contributory negligence of both. However coming to contributory

negligence of jeep driver, for no MVI report or scene observation report filed and the charge sheet filed after investigation is against the lorry driver, it is just to fix contribution of jeep driver at 10% and remaining 90% of the lorry driver.

7. Coming to the quantum of compensation, the deceased as per Ex.A.5 was drawing salary of Rs.4500/- as on the date of accident on 20-08-2002 as per **Rajesh Vs.Rajabir** the prospective earnings of the deceased to be taken into consideration the said deceased was aged about 27 years as per Ex.A.4 PME report the prospective increase is 50% to take, after deduction of reasonable amount to the professional tax etc., it comes to Rs.4,000/- per month + Rs.2,000/- 50% increase = Rs.6,000/-. The dependants are wife and mother and 1/3rd if deducted towards personal expenses of the deceased, it comes to Rs.4,000/- per month towards loss of dependency to the claimants. The multiplier "17" is applied following **Sarla Verma v. Delhi Transport Corporation**, it comes to Rs.8,16,000/-, besides that the claimants are entitled to Rs.1,00,000/- towards consortium, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of estate, in all it comes to Rs.9,51,000/- and 90% therein comes to Rs.8,55,900 rounded to Rs.8,56,000/- . However, by reducing rate of interest from 9% per annum to 7.5% per annum from the date of claim petition till realisation. Accordingly, the point No.1 is answered.

POINT No.2:

8. In the result, the appeal is partly allowed by enhancing the compensation from Rs.6,31,930/- to Rs.8,56,000/- apportioning at 1/3rd to the mother and 2/3rd to the wife of the deceased out of the said compensation amount and by reducing rate of interest from 9% per annum to 7.5% per annum from the date of claim petition till the date of realisation. There is no order as to costs in the appeal. In all other respects, the award of the Tribunal holds good.

9. Miscellaneous petitions pending if any in this Appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

27-02-2015

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It is represented that R-1 owner of the vehicle who remained ex parte before the Tribunal has been erred in the appeal and dismissed for default for non-payment of batta due for R-1 vide order dated 16-09-2011. Even non-impleading of R-1 to the appeal no way fatal to the maintainability of the appeal. Hence considered the same pursuant to the expression of this Court in Hence taken-up for hearing.

2. Heard learned counsel for the appellant-wife of the deceased among two claimants including third respondent-mother of the deceased and learned counsel for the second respondent-insurer.