

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.1313 OF 2009

JUDGMENT:

The appellants are the claimants 1 to 4 no other than the wife, one major and one minor son aged 17 years (declared as major as per orders dated 30.04.2009 in MACMAMP No.2522 of 2009) and mother of deceased Kalya Prabhakar respectively as per the claim petition cause title in O.P.No.385 of 2005 on the file of the learned Chairman of the Motor Accidents Claims Tribunal—cum-II Additional District Judge, Nalgonda at Suryapet (*for short, 'Tribunal'*), filed under Section 166 of the Motor Vehicle Act, 1988 (*for short, 'the Act'*) for the claim of Rs.3,00,000/-, against the respondents who are the M/s Bhargavi Transport-owner of the lorry bearing No.AP-11-W-6573 (1st respondent) and the Insurer-(Oriental Insurance Company Limited-2nd respondent) vide policy No.1386 for the accident dated 17.06.2005 the policy is undisputedly in force, with the averments that on 17.06.2005 while the deceased Prabhakar and another person (Parvathulu as per the chargesheet Ex.A.4) were proceeding on scooter bearing No.AP-24-D-6194 from Pathangi towards Chowtappal (as per chargesheet), the crime lorry supra coming in opposite direction towards Hyderabad dashed and ran over the scooter as a result, the deceased and the pillion rider succumbed to grievous injuries. The age of the deceased shown about 45 years in the chargesheet with reference to postmortem report and the tribunal dismissed the claim in toto on the ground that as per the contest of the Insurer with reference to Ex.B.1 policy and cross-examination suggestions to P.W.1, policy issued is for AP 11 U 6573. The difference is 'U' for 'W'. There is no independent evidence let in by the Insurer much less by showing engine number and chasis number not tallied and even by showing owner's name not tallied including from any suggestion worth in this regard to P.W.1 or eye witness P.W.2 for the tribunal to disown the claim of the claimants.

2. Aggrieved by the said dismissal order, the claimants preferred the appeal supra seeking to allow the claim as prayed for.

3. Heard the learned counsel for the claimants-appellants and the learned standing counsel for the 2nd respondent-Insurer and the 1st respondent-owner of the crime lorry in the appeal as well as claim petition who remained *ex parte* before the

Tribunal also not chosen put forth his appearance herein but as per the expression of the Apex Court in **M.Chakra Rao v. Y.Baburao**, taken as heard.

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 that arise for consideration in the appeal are:

1. Whether the award of tribunal dated 16.01.2009 dismissing the claim of the claimants/appellants herein is unsustainable and requires interference by this Court while sitting in appeal and if so, with what compensation, rate of interest and what observations?

2. To what result?

Point No.1:

6. In the course of hearing, it is the submission of the learned counsel for the claimants that the mistake in quoting number of crime lorry as 'U' for 'W' no way fatal and it is brought to the notice of the Court that there is a Lok Adalath settlement vide L.A.C. No.9 of 2006 by award dated 07.01.2006 in the other claim O.P.No.619 of 2005 on the file of I Addl. District Judge at Naglonda, filed by the legal heirs of the another deceased of this accident Parvathalu, the defacto-complainant is no other than the brother of Parvathalu with surname 'Kadaganchi' and he referred the deceased rider of the motor cycle as own brother, the address also tallying the award settled therein is for 5 lakhs and the vehicle number referred as AP11 W 6573 by the self-same Insurer undisputedly insured and the owner name referred as M/s Bhargavi Transport like in the present one which is suffice to say the vehicle of R.1 involved in the accident is insured with the R.2 to the claim petition as well as the appeal and the said award is not disputed even by the learned counsel for the Insurer. The evidence on record clearly speaks not only from the F.I.R. but also from the police final report charging the accused and that of the P.W.2 eye witness that the accident was the result of rash and negligent driving of the lorry driver. No doubt as pointed out by the learned counsel for the Insurer in the appeal that the vehicles were proceeding in the opposite direction and the accident was at about 8.00 P.M. but for contribution by the deceased persons-rider and pillion rider of the motor cycle also as it was National high way. As also pointed out, the claimants not even filed the rough sketch of the scene of offence to shows place of accident. Once the two

vehicles are proceeding in opposite direction and the accident occurred and shows main contribution is lorry driver but it cannot be overruled contribution by the deceased also in the National Highway. Thus even therefrom as it all depends upon the manner of accident and size of the vehicle involved, even 20% contribution of the deceased that is pillion rider and rider of the motor cycle deducted, the insurance company-2nd respondent to indemnify for 80% as the rider and pillion rider met with death from the injuries sustained in the accident from the lorry dashed the motor cycle as per the chargesheet.

7. Now coming to 80% compensation concerned, age of the deceased as referred supra shown about 45 years and as per **Sarla Verma v. Delhi Transport Corporation** for the persons aged between 46 to 50 multiplier 13 is applicable, for the age of the deceased is shown about 45 years even taken 13.5 multiplier, the maximum, and the earnings of the deceased can be taken for no proof at Rs.3,000/- as per the guidelines in the expression of Apex Court in **Latha Wadhwa vs. State of Bihar** even for the non-earning person or housewife and the accident taken place in the year 2005, four years after the said expression, with prospective increase, entitled to Rs.3400/- per month as on the date of accident and so far as the claim is concerned, the 2nd claimant, son of the deceased is shown as minor even in the claim petition as about 18 years though wrongly arrayed as represented by mother once he is not a dependant there are three dependants therefrom, 1/3rd is deducted towards personal expenses which comes to Rs.2266.66x12x13.5(multiplier)=Rs.3,67,199/-+Rs.1,00,000/- for loss of consortium, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of estate and Rs.10,000/- to the third claimant-minor for care and guidance in total comes to Rs.5,12,199/- and 80% therein comes to Rs.4,09,759/-, hence Rs.4,10,000/- is the just compensation though claimed only Rs.3,00,000/-, entitled to the enhancement subject to payment of deficit Court Fee. Accordingly, point No.1 is answered.

Point No.2:

8. In the result, the appeal is allowed by awarding compensation of Rs.4,10,000/- (Four lakhs ten thousand only) however with interest at 7.5% p.a. only from the date

of appeal till realization. The claimants are directed to pay Deficit Court Fee under Rule 475 of the A.P.M.V. Rules within one month from today. Without payment of Deficit Court Fee, they are not entitled to execute award but respondents are directed to deposit amount within two months from today or one month from the date of receiving of the award whichever first occurs. Out of the compensation amount, the 1st claimant is awarded 40% and the remaining 3 claimants 20% each. There is no order as to costs. Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 13.11.2015

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