

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.4132 OF 2012

JUDGMENT:

The claimants filed this appeal having been aggrieved by the Order/Award of the learned V Additional Metropolitan Sessions Judge (Mahila Court)-cum-XIX Additional Chief Judge, City Criminal Courts at Hyderabad (*for short, 'Tribunal'*) in O.P.No.2668 of 2006 dated 14.03.2008, awarding compensation of Rs.1,65,000/- (Rupees One lakh sixty five thousand only) with interest at 7% per annum against claim of Rs.4,00,000/- (Rupees Four lakhs only) claimed in the claim petition filed under Section 166 of the Motor Vehicle Act, 1988 (*for short, 'the Act'*).

2) The claimants are no other than wife and two children of deceased and 3rd respondent is the mother of deceased by name Balaiah @ Balraj. The 1st respondent is owner of the vehicle bearing No.KA 19 AB 2799. The 2nd respondent is the insurer of the vehicle. The Tribunal has no option to exercise before commencement of enquiry/ trial from the issues formulated including the 1st issue as to outcome of rash and negligent driving of the driver of the lorry, as the claim taken under Section 166 M.V. Act.

3) As per the claimants, the deceased was working as Labourer and earning Rs.3,000/- per month. Even from the FIR, one of the coolies, who was accompanying the deceased and the riders of independent bicycles speaks that they are coolies. As per the claim petition, on 27.11.2005 at about 9 pm the deceased was proceeding on his bicycle from Sumitranagar towards Moosapet and when he reached near Durga Mess, a bus bearing No.KA 19 AB 2799 came from behind and dashed against his bicycle, as a result of which, he fell down and sustained injury. The Tribunal observed that the accident is due to rash and negligent driving of the bus driver.

4) A reading of Exs.A1 to A4 i.e., FIR, charge sheet, inquest report, post mortem report clearly speaks that the deceased and others consumed country liquor and when they were proceeding on road, the accident occurred at about 9.00 pm. It is from the very say in the FIR, the Tribunal assessed the negligence on the part of the deceased as consumed liquor and riding bicycle fixed 50% negligence on the

part of owner cum driver of bus—respondent No.1 insured with respondent No.2. The Tribunal arrived at the compensation of 40% i.e., Rs.1,65,600/- and awarded interest at 7% per annum.

5) Though the 1st respondent to the appeal being owner of the vehicle remained ex parte before the Tribunal, he was impleaded as respondent No.1 to the appeal and, for not taking further notice despite earlier unserved, dismissed for default vide order dated 21.09.2011. It is the submission of learned counsel for the petitioners following the expression of this Court in ***Meka Chakra Rao vs Yelubandi Babu Rao*** that once a party remained ex parte before the Tribunal and not a necessary party to the appeal and even if impleaded and dismissed for default, there is no bar of maintainability of appeal and the same is recorded.

6) It is the contest of the claimants in the appeal that fixing of 60% contributory negligence on the part of deceased, quantum of compensation arrived, 1/3rd deduction taken and multiplier adopted are unsustainable, whereas it is the contention of the learned counsel for the insurer that the award of the Tribunal holds good as the same is supported by reasons and for this Court while sitting in appeal there is nothing to interfere, hence to dismiss the appeal. Heard at length and perused the material on record.

7) The learned counsel for the claimants placed reliance on the expression of ***Jiju Kuruvila and others vs Kunjamma Mohan and others*** where there is a head-on collision between a car and bus coming from opposite directions resulting in death of car driver, who was in intoxication. Therefrom, the Tribunal fixed contributory negligence for consumption of alcohol and the Apex Court set-aside the same for no other evidence.

8) In fact, from the factual matrix, the facts in the case of Jiju supra are entirely different to the case on hand. The co-workers of the deceased himself stated they consumed country liquor, thereafter, the deceased was proceeding forward to them and they later tried to reach him, but could not and in the meantime, the accident occurred. LW.1—de facto complainant, who set the law in motion, is not even an eye witness to the occurrence as to say the manner but for saying unknown vehicle dashed and ran over. It appears that subsequently the offending vehicle is traced in fixing the liability on R1 in claiming, since insured with respondent No.2 to indemnify. Those facts are not in dispute from the final report covered by Ex.A2

charge sheet. Ex.A4—post mortem report shows that he sustained head injury due to fall under the wheels, leave about the other injuries, if any.

9) The factual matrix itself is sufficient to say the deceased also contributed but for to say the finder of the lost opportunity with the vehicle driver and thereby 60% contribution on the deceased. Having regard to the above, the contribution of the deceased is fixed at 25% and the remaining 75% to the vehicle insured with 2nd respondent. Therefrom, coming to the quantum, the deceased was working as labourer and earning Rs.3,000/- per month. Though it is one of the contentions to consider prospective earnings, the deceased is not a self employed or fixed wage earner or an employee to consider that request even from the expression of the Apex Court in **Rajesh vs Rajbir Singh** following **Sarla Verma vs Delhi Transport Corporation**. If the income of the deceased is taken at Rs.3,000/- per month, as claimed before the Tribunal by the claimants, as there are four claimants, 1/4th to be deducted towards personal expenses as per Sarla Verma supra and Rajesh supra, it comes to Rs.2,250/- (Rs.3,000/- X 1/4) per month. The age of the deceased is about '30' years and the multiplier applicable is '16.5', the compensation comes to Rs.4,45,500/- (Rs.2,250/-X12X 16.5). Apart from it, Rs.1,00,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses, Rs.20,000/- towards care and guidance and Rs.10,000/- towards loss of estate, it comes to Rs.6,00,500/-. If 25% out of the same deducted towards contribution of the deceased, it comes to Rs.4,50,375/-, for which the claimants are entitled.

10) The petitioners claimed for Rs.4 lakhs. However they are entitled to just compensation as per Rajesh supra, subject to payment of deficit court fee.

11) In the result, the appeal is allowed by enhancing the compensation from Rs.1,65,600/- (Rupees One lakh Sixty Five thousand six hundred only) with interest at 7% per annum to Rs.4,50,000/- (Rupees Four Lakhs fifty thousand only) with interest at 7.5% per annum from the date of petition till the date of the appeal is numbered with delay condonation application allowed in MACMA MP No.6000 of 2008 on 18.12.2012 on the original amount and at 7.5% per annum from 19.12.2012 till realization on the enhanced amount of Rs.4,50,000/-. The claimants shall be liable to pay deficit court fee on Rs.50,000/- under Rule 475 of the A.P M.V Rules within one month from date of receipt of this order before the Tribunal and without payment of the Deficit Court fee not entitled to execute the award. The Insurer to

deposit balance amount due as per the above before the Tribunal within one month from the date of receipt of the award, failing which subject to payment of deficit Court fee, claimants can execute and recover. There is no order as to costs.

12) Consequently, miscellaneous petitions if any pending in this appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:18-11-2015

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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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Date:18.11.2015

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