

**HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

**C.M.A.No.1001 of 2004**

**JUDGMENT:**

The sole respondent-Andhra Pradesh State Road Transport Corporation (APSRTC) represented by its Managing Director in the claim maintained by wife, two minor children and mother of the deceased Manohar aged about 28 years as per Ex.A.3 Post Mortem Examination (PME) report, under Section 166 of Motor Vehicle Act, 1988 (for short" the Act') on the file of the learned Chairman of the Ill Motor Accidents Claims Tribunal, Warangal (*for short, 'Tribunal'*) in O.P.No.946 of 2001 for compensation of Rs.3,32,000/- since awarded entire claim by the Tribunal as prayed for with interest @ 9% per annum, impugning by the award dt. 14-11-2003, preferred the present appeal.

2. The contentions in the grounds of appeal as well as the oral submissions of the learned Standing Counsel for the RTC that the Tribunal gravely erred in not considering the contributory negligence on the part of the rider of the bike to which the deceased was pillion rider in the accident resulted out of their sheer negligence in entering into the bus stand without any right and without observing the bus moving to the bus stand and thereby to fix contributory negligence equally on the part of the scooterist and reduce the compensation from there equally the rate of interest since 9% is excessive and exorbitant.

3. Whereas, it is the contention of counsel for the claimants that but for no cross-objections award of the Tribunal holds good and there is nothing to interfere. Hence to dismiss so far as the claim and rate of interest is concerned and there is no scope even to consider any contributory negligence much less on the part of the scooterist to which the deceased was pillion rider.

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 point for consideration is,

*1. Whether the compensation awarded by the Tribunal is excessive so also rate of interest to reduce and there is contributory negligence on the part of rider of the scooter to which the deceased was pillion rider and, if so, the award of the tribunal is unsustainable, if so with what observations?*

## *2. To what result?*

### POINT No.1:

6. So far as the quantum of compensation awarded by the Tribunal for Rs.3,32,000/- is concerned, the deceased was aged about 28 years. The claim is under Section 166-A of the Act, the multiplier applicable as per **Rajesh Vs.Rajabir Singh** following **Sarla Verma v. Delhi Transport Corporation** is “17” and even Rs.3,000/- p.m. taken as earning of the deceased as on the date of accident i.e. 24-08-2001 following **Latha Wadhwa V.State of Bihar** for no proof of deceased as Bank Messenger much less salary proof as per the expressions supra. The claimants four in number are dependants and pursuing studies is only 1/4<sup>th</sup> and not 1/3<sup>rd</sup> to be deducted towards personal expenses, then it comes to Rs.2250/-p.m. x 17 (multiplier) x12 = Rs.4,59,000/-besides Rs.1,00,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses and Rs.30,000/- towards care and guidance to minor children and in all it comes to Rs.6,14,000/-. Even for argument sake of there is any contributory negligence on the part of scooterist to which the deceased is pillion rider, taken contribution at 25% therein and the Tribunal awarded is no way excessive but low but no cross-objections to enhance and to reduce rate of interest from 9% to 7.5% . Accordingly, the point is answered.

### Point No.2:

7. In the result, the appeal is partly allowed by fixing the contributory negligence of the rider of the motor cycle to which the deceased was the pillion rider at 25% of compensation of Rs.3,32,000/- as awarded by the Tribunal and by reducing the rate of interest from 9% to 7.5% per annum. As the first petitioner stated died,

the petitioners 2 and 3 are Legal Representatives on record, Smt.Malabanti Eligabeth Rani W/o. Asheervadam is appointed as guardian for them vide CMA.M.P.No.79 of 2015 and they can approach the Tribunal for determination of the compensation and any permission for withdrawal, than that of to invest in Fixed Deposit till they attain majority, or for permitting any withdrawal of interest for maintenance and education of minors. In all other respects award of the Tribunal holds good.

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**Dr. B. SIVA SANKARA RÃO, J**

Date: 27-02-2015

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