HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.M.P.No. 2193 of 2015

AND

M.A.C.M.A.No. 2716 of 2015

JUDGMENT :

The four claimants no other than wife, major daughter, major son and aged mother of the deceased by name Chandra Mouli aged about 52 years as per Ex.A.3 P.M. report since left only nearly six years service to reach or attain the age of superannuation on completion of 58 years even as per Ex.X.2 service register extract produced and proved through P.W.3, claiming as per the evidence of P.W.3 by the date of accident drawing gross salary of Rs.16,322/-, filed the claim petition under Section 166 of M.V. Act against the owner and insurer of a Maruti Car bearing No.AP 9BU 9998 as respondents 1 and 2 and the Head Office of the insurer as the 3rd respondent for a compensation of Rs.19,23,000/-. Whereas the Tribunal by award dated 23.12.2011 granted compensation of Rs.7,30,668/- with interest at 6% p.a. by apportioning among the claimants and impugning the same as quantum of compensation is utterly low and on other grounds, the claimants maintained the present appeal showing the said respondents.

The claimants filed an application in MACMAMP No.2193 of 2015 to condone the delay of 180 days in filing the appeal. It is needless to say, earlier an application for condonation of delay in re-presenting the appeal was allowed by order dated 27.08.2015 subject to condition that in case the appeal is to be allowed, the claimants shall forego the interest for the period of delay in re-presentation of the appeal. In fact, there is delay not only in re-presentation of the appeal but also in filing the appeal. The grounds assigned for the delay of 180 days in the affidavit petition are that due to financial problems and for attending the aged sick mother of the deceased, the claimants could not prefer the appeal.

Heard and perused the material on record.

The delay is condoned subject to condition of not entitled to interest over and above the claim awarded by the Tribunal till date.

At request of both sides, the appeal is taken up for hearing. The 1st respondent owner, as stated supra, having been served failed to attend the Court.

The contentions of the counsel for the claimants/appellants mainly are, besides entitled to conventional amounts, as per ***Rajesh v. Rajbir Singh***[1]***,*** the award of the Tribunal is liable to be set aside to the extent of fixing 50% contributory negligence on the part of the deceased rider of the bike for there is no basis and the prospective earning capacity of the deceased also required to be taken into consideration and the interest awarded is required to be enhanced also as per ***Rajesh case (1 supra).***

Whereas, it is the contention of the counsel for the respondent/insurer that the award of the Tribunal holds good and for this Court while sitting in appeal there is nothing to interfere. It is also the further submission that the Tribunal having been fresh in facts recorded the evidence with opportunity arrived a conclusion of contributory negligence, there is nothing for this Court to interfere with that finding and in ***Sarla Verma v Delhi Transport Corporation***[2]**,** the interest awarded is 6% and thereby there is nothing to enhance by sitting in appeal and further that if the income tax deduction is not even given it shall not be less than 20% to 10% for several expressions out of the earnings and further that even from Ex.X.2 and evidence of P.W.3, the deceased only left service nearly six years to attain superannuation and thereby no prospective earnings can be taken into consideration in applying the multiplier method for whole of the remaining life and thereby sought for dismissal.

Though it is claimed by the counsel for the claimants to take 1/4th deduction as per ***Sarla varma case (2 supra)*** for the claimaints are four in number, in fact, the wording is that stress on the dependents and not the claimants. Claimants 2 and 3 are major son and major daughter and as their marriage was performed, they are not even dependents. Thus, 1/3rd deduction is just as arrived by the Tribunal.

No doubt, in the expression of the Apex Court in ***Rajesh case***
(1 supra), what is laid down is towards loss of consortium Rs.1,00,000/- minimum entitled, funeral expenses Rs.25,000/- and loss of estate Rs.10,000/- that is required to be enhanced or reduced to that extent as the case may be.

Coming to the future prospects, no doubt as per ***Rajesh case (1 supra)*** and ***Sarla Verma (2 supra),*** for the salaried employees and even persons with self avocation, prospective increase to be taken into consideration and as per that expression following ***Sarla Verma case***, for the persons aged between 51 to 60 the increase is 15%. Here, undisputedly, from the evidence of P.W.3 and Ex.X.2, the deceased remaining service is below six years. The prospective earning capacity to be taken into consideration is for the whole of the remaining life and it all depends upon the contingencies, no doubt, otherwise, entitled but for the very earnings are only during the length of service till to attain the superannuation. Apart from it, there shall be income tax deduction from prospective increase also proportionately ranging from more than 10% as per the earnings to be arrived. Having regard to the above, in the present set of facts neither income tax deduction required nor prospective increase of 15% even for the remaining six years by proportionate adopting to the multiplier method. Other than that, there is nothing more but for the contributory negligence concerned. No doubt, contributory negligence depends upon several factors, however, there is a rider on the power of the appellate Court while sitting in for interference when having been fresh in facts by recorded evidence arrived to a conclusion but for to the perversity or un-sustainability.

Here, coming to the contributory or composite negligence, among several factors to be considered, mainly, the size of the road and its condition on which place the vehicles are plying as per the scene observation and extent of damage on which side even to decide who were at wrong side and as to the manner of accident to fix which facts are not before the Court as rightly even concluded by the Tribunal, however, by saying head on collision, it fixed 50% liability, though it is settled law that in fixing such liability of head on collision, size of the vehicle also plays a prominent role. Here, it is the Maruti car and a two-wheeler bike.

Having regard to the above, 50% contribution fixed on the part of the deceased by the Tribunal is unsustainable and requires to be reduced to 25% and but for that and to enhance the interest from 6% to 7.5% as laid down in ***Rajesh case (1 supra)*** from the date of appeal, there is nothing to interfere.

Accordingly and in the result, the appeal is partly allowed by enhancing the compensation from Rs.7,30,668/- to Rs.11,78,502/- (Compensation fixed by Tribunal Rs.14,36,336/- + loss of consortium

Rs.1,00,000/-, funeral expenses Rs.25,000/- and loss of estate Rs.10,000/-, totaling to Rs.1,35,000/- = Rs.15,71,336/-, of which, 75% is Rs.11,78,502/-), rounded to Rs.11,79,000/- by enhancing the rate of interest from 6% to 7.5% from today on the said compensation by upholding the rate of interest of 6% in other respects as per the award of the Tribunal. There is no order as to costs in the appeal. There is no order as to costs.

Consequently, miscellaneous petitions if any pending in the appeal shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

3rd December, 2015
cbs

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[1] 2013 ACJ 1403=(4)ALT-35(SC).

[2] 2009 ACJ 1298.