HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No. 3586 of 2011

JUDGMENT :

The 2nd respondent in O.P.No.116 of 2010 among two respondents including the owner of a private bus bearing No.TN 76Z 4445, preferred the appeal showing the claimants 1 to 4 as respondents 1 to 4 of whom respondents 2 and 3 since declared as majors by order dated 18.11.2014 in MACMAMP No.4514 of 2014 and also showing the 1st respondent to the claim petition, the owner of the bus, as 5th respondent to the appeal, impugning the award of the Tribunal granting compensation of Rs.14,69,000/- with interest at 8% p.a., mainly on two contentions.

The first contention is that the Tribunal gravely erred in fixing the liability as if the bus driver was totally at fault though the deceased sustained head injury while negotiating a curve in riding the bike to show there is contribution from the deceased, also apart from the evidence of P.W.2 is incredible and untrustworthy for turned hostile before the trial Court in C.C.No.830 of 2009 against the driver that ended in acquittal by the Judicial Magistrate of First Class, Kurnool, dated 28.07.2010 where he was examined as P.W.3 among P.Ws.1 to 4, the so-called eye witness to the accident who did not support the prosecution case of rash and negligent driving of the bus driver much less by identifying the driver of the bus and the Tribunal gravely erred having discussed the judgment marked as Ex.B.2 of the calendar case, in finding by relying on the untrustworthy deposition of P.W.2 as if he deposed before the Court of accident was the result of rash and negligent driving of the driver of the bus of the 1st respondent and the insurer the 2nd respondent of the claim petition.

The other contention is that the quantum of compensation is excessive, exorbitant and not at all just, thereby required to be reduced and there is no proof to say, what is the other source of income to him, and even not filed among Exs.A.6 to A.8 placed reliance by P.W.1 any income tax return of the relevant financial or assessment year for the accident was dated 22.08.2009 as the returns are relating to 2003-2006, and there is no proof to show as on the date of death of the deceased, he was doing any avocation and earning any amount for no accounts even produced and that even from perusal of the so-called income tax returns of about 4 years prior to his death, the main source of income is from agriculture and what he lost at best from death for no loss of income is only supervision of the agricultural lands and thereby at best to take Rs.3,000/- p.m. and what the Tribunal taken of Rs.1,80,000/- per annum is unsustainable and also sought for reducing the rate of interest from 8% to 6% p.a. as held in ***Sarla Verma v Delhi Transport Corporation*.**

Whereas it is the contention of the counsel for the claimants/ respondents 1 to 4 that what the Tribunal awarded is very low to enhance, but for no cross appeal and even the police final report in the charge sheet taken cognizance by filing of Ex.B.2 and after framing of charge, the Court put the accused to trial itself is sufficient of showing the preponderance of probability of the accident was the result of the negligent driving of the driver of the bus, even there is any benefit of doubt given by the criminal Court for bus driver not identified by turned hostile by even P.W.2 among other witnesses before the criminal Court, and thereby, there is nothing to interfere with the fact finding of the trial Court, having fresh in mind the facts by recorded evidence, and even coming to the quantum, there is nothing to interfere, and so far as the discretion in the rate of interest is concerned, there are expressions even awarding 9%, thereby there is no ground to reduce the interest from 8% p.a. Hence sought for dismissal and also sought for permission of the Court to the claimants to withdraw the amounts by approaching the Tribunal.

Heard and perused the material on record.

Among two witnesses examined on behalf of the claimants, P.W.2 so called eye witness whose evidence is incredible and cannot be given prudence, as he did not support the case as given in Ex.B.2 judgment of the trial Court in C.C.No.830 of 2009 dated 28.07.2010. However, the fact remains the crime registered under Ex.A.1 FIR is against the driver of the bus of the 1st respondent. The police filed final report covered by Ex.A.5 charge sheet and that was taken cognizance and even for charges framed against the accused he faced the trial i.e., the driver of the bus, and what the benefit of doubt given is regarding identity of the driver of the bus and not regarding the manner of accident and once the police final report from the investigation clearly speaks that is supported by the evidence of P.W.1 though not an eye witness and when corroborated on material aspects from P.W.2 though his evidence cannot be taken as ring of truth for did not support the prosecution case in C.C.No.830 of 2009 that is sufficient to the substantiating of the finding of the trial

Court for this Court while sitting in appeal of the accident was the result of rash and negligent driving of the driver of the bus of the 1st respondent.

Now, even coming to the quantum of compensation, no doubt, as can be seen from the income returns, extra income shown of agriculture. So far as the business income is concerned, type of business and proof of business not filed and even what P.W.1, wife of the deceased, orally deposed of earning Rs.1,80,000/- p.a. with no basis and not even matching to the income tax returns Exs.A.6 to A.8 showing in the first year about Rs.1,60,000/- total income, of which, agricultural income is about Rs.1,50,000/-. Whereas in other two years, it is ranging from Rs.3,00,000/- to Rs.4,00,000/- with agricultural income about Rs.1,50,000/-, and thereby, no credence can be attached to it. However, the fact remains from the evidence on record of not disputing about he got agricultural supervision and also doing some avocation and the income tax returns regarding other source of income though not to the extent there is something not even in dispute from the material on record. Thus, even taken there from Rs.10,000/- on average income of the deceased from agricultural supervision and other sources and if 30% increase is given being self employed as per ***Rajesh v. Ranbir Singh*** following ***Sarla Verma (1 supra)*** and after 1/4th deduction for the claimants dependence four in number as per the expression supra, and added to it, loss of consortium, funeral expenses, loss of estate and care and guidance to two minor children, what the Tribunal awarded of Rs.14,69,000/- no where requires interference to reduce but for to reduce the rate of interest from 8% p.a. to 7.5% p.a.

So far as the permission to the claimants 1 and 4 is concerned, they are permitted to withdraw each Rs.1,00,000/- subject to the entitlement to the extent of the 4th claimant.

In the result, the appeal is partly allowed while confirming the award of the Tribunal on the quantum and the findings, however, by reducing the rate of interest from 8% p.a. to 7.5% p.a. from the date of claim petition till the date of realization as per ***Rajesh case (2 supra)***. The claimants 1 and 4 are permitted to withdraw Rs.1,00,000/- each subject to availability of such extent of amount to the credit of the 4th claimant. The appellant, 2nd respondent, is directed to deposit the balance amount if any within one month from the date of receipt of a copy of this appeal award, failing which, the claimants can execute and report. There is no order as to costs in the appeal.

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

Dr. B. SIVA SANKARA RAO, J

2nd December, 2015

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