HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA Nos.331 AND 403 OF 2012

COMMON JUDGMENT:

Impugning the award of the Chief Judge, City Civil Courts, Hyderabad, dated 25.03.2011 in O.P.No.134 of 2008 filed by two claimants, no other than mother and major brother of the deceased-unmarried, showing the father alive even informant as per Ex.A1, F.I.R., the claim petition was filed under Section 166 of the Motor Vehicles Act, for Rs.18 lakhs against the Managing Director and Depot Manager of the A.P.S.R.T.C. as two respondents alleging that on 07.10.2007 at about 1300 hours, while the deceased with PW.2, A.N.Vinay Kumar as pillion rider, riding by the deceased, who got learner license covered by Ex.A25 of the bike bearing No.AP 10 AH 5393, the R.T.C. bus of the respondents bearing No.AP 10Z 7415 coming from behind dashed, as a result the deceased-rider of the bike fallen down and sustained injuries and he breathed the lost that was declared by Doctor when shifted in 108 ambulance immediately after the accident at R.R.Hospital. The crime registered as 171 of 2007, on the information of the eye witness to the father of the deceased as Ex.A1. The police after investigation filed Ex.A3-final report. Ex.A4-P.M.E.report shows the cause of death due to head injury though there were no crush injuries. As pointed out by the learned counsel for the 2nd respondent of PW.2 evidence is not believable of as if the bus run over the head of the deceased and crushed, since there are contusions and blood clot with hammerage from the fracture cartal region.

In fact, PW.2 is an eye witness is borne out by very report of the father of the deceased as source of information to the accident as pillion rider of the bike rider-deceased. The fact that the bus was coming from behind itself speaks having finder of last opportunity to avert that is the finding arrived by the tribunal and even the APSRTC maintained the appeal in MACMA No.403 of 2012 so far as that finding concerned to the allegation or contention of there is contribution by the deceased, there is no substance to accept much less to set aside the reasoned conclusion arrived by the tribunal of the fault is with the bus driver.

2. Coming to the compensation quantum concerned, the two rival appeals, one by the claimants and the other by the APSRTC as utterly low and excessive respectively, as to what is the just compensation; the evidence on record before the tribunal is that of PWs.1 to 4 of whom PW.3 did not face cross examination and his evidence is with no value, though treated as 'eschewed', but the word eschewing evidence is unknown to law. PW.4 was examined to prove the salary certificate of the deceased covered by Ex.A27 with reference to Ex.A30-pay slip of the deceased for the months of August and September, 2007. It is claimed with reference to Exs.A6 to A25 of deceased not only completed graduation but also got merit certificate in the sports and pursuing his P.G.Diploma vide Ex.A11 that is only computer diploma in P.G. It is to say, he got P.G.Diploma and graduation, though otherwise a meritorious one in academics and extra curricular activities and no income tax returns of the deceased are filed. Exs.A27 and A30 are salary particulars of the deceased and pay slip of the deceased for the months of August and September, 2007, respectively, show Rs.14,393/- as gross salary and income tax deduction Rs.110/-, which is hardly believable. Even from the income tax calculation of rates of slabs produced by the learned counsel for the claimants, in 2006-2007 by relevant time with reference to financial year and assessment year 2006-2007=2007-2008, less than Rs.1,00,000/- is nil, above Rs.1,00,000/- upto Rs.1,50,000/- is 10%, Rs.1,50,000/- to Rs.2,50,000/- is 20% and above Rs.2,50,000/- is 30%. Apart from it, there is education cess at 4%. Even taken the same, it is around 14.52% i.e., 15%. The learned counsel placed reliance on the expression in **Chanderi Devi v. Jaspal Singh**, where tentatively 10% income tax deducted in asking to take the same, however on own saying as referred supra when it is rounding to 15% from the prospective increase from Rs.14,000/- p.m. even deduction with 50% as per **Sarla Verma v Delhi Transport Corporation,** approved in **Rajesh and others Vs. Ranbir Singh and others,** on the gross of Rs.21,000/- p.m. apart from 15% income tax deduction on Rs.21,000/- p.m. The other deductions and contributions Rs.1,750/-, if Rs.5,000/- to be deducted out of Rs.21,000/- p.m. with

prospective increase of salary Rs.14,000/- p.m., it comes to Rs.16,000/- p.m. and half of the amount to be deducted as claimants are the mother and brother but brother is not dependent on the deceased, on parents at best, from the age of mother taken shown about 45 years for the multiplier between 46 to 50 years is '13' as per **Sarla Verma** (supra) and **Rajesh**(supra), it comes to Rs.12,48,000/-(Rs.8000/-x12x13). Besides that the claimants are entitled to Rs.10,000/- towards loss of estate, Rs.25,000/- towards funeral expenses. Thus, in total, it comes to Rs.12,83,000/-. Thereby, what the tribunal awarded of Rs.6,39,000/- is required to be enhanced to Rs.12,83,000/-. However, the rate of interest from 9% is to be reduced to 7.5% vide **TN Transport Corporation v. Raja Priya** and **Rajesh(**supra**).**

3. Accordingly and in the result, both the appeals are partly allowed as follows:

   a. MACMA No.331 of 2012 is partly allowed by enhancing compensation from Rs.6,39,000/- to Rs.12,83,000/- and by reducing rate of interest from 9% to 7.5%; and

   b. MACMA No.403 of 2012 is partly allowed, while dismissing the quantum impugning for nothing being low since already enhanced, only reducing the rate of interest from 9% to 7.5%.

There is no order as to costs.

4. Miscellaneous petitions, pending if any, shall stand closed.

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Dr. B. SIVA SANKARA RAO, J

Date:24-11-2015

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