

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A No.269 OF 2010

JUDGMENT:

The 1st claimant—B.Kodanda Reddy, who sustained injuries in the motor accident dated 05.03.2001 maintained M.V.O.P. No.432 of 2004 on the file of Motor Accidents Claims Tribunal-cum-III Additional District Judge, Tirupati (for short 'the Tribunal') against General Manager, Tamilnadu State Transport Corporation Limited under Section 166 of Motor Vehicles Act (for short 'the Act') for a compensation of Rs.4,00,000/-. During pendency of claim petition, he died on 07.09.2004 and the claimants 2 to 4, who are no other than his wife and two daughters were brought on record and pending the same, 4th claimant also died and it is shown claimants 2 and 3 are surviving legal representatives of deceased Kodanda Reddy and the same was recorded by the Tribunal in June, 2006 to that effect and ultimately on contest, the Tribunal, basing on the principle of '**actio personalis moritur cum persona**' a personal action dies with the person and only the expenses incurred by the estate of the deceased can be claimed and for no data submitted, awarded Rs.15,000/- as loss of estate to be entitled by the claimants with interest at 7.5% per annum. Impugning the same, the claimants maintained the appeal.

2) Even notice served on respondent failed to attend, hence taken as heard. Heard learned counsel for appellants 2 and 3. Perused the material on record.

3) The principle apart from not strictly applicable to the Indian conditions is the settled law, that too, for claims under the Motor Vehicles Act, 1988, here, that difficulty also does not arise, as he maintained the claim and pending adjudication of the claim, he died

and his legal representatives, thereby, are entitled to the claim also as per the provisions of the Indian Succession Act, by continuation of the proceedings for what the deceased could get if he is alive and as such the principle has no application to the facts from what is discussed supra.

4) Once such is the case, from the evidence on record, he sustained injuries to left leg and there is no record to show any other injuries all over the body. He was admitted in Stanley Hospital, Chennai and there is no medical record. He failed to show that he was inpatient for 8 to 9 months. As Exs.A2 and A3—case sheet of Stanley Hospital and case sheet of Christian Medical College, Vellore respectively no where shows continuous treatment of him as inpatient for such a long period. As per Ex.A4—Disability certificate, there is a 27% permanent physical disability from the compound fracture of both bones of left leg, however, the person who issued the disability certificate was not even examined to prove the same.

5) Before coming to that, it is important to know the manner of accident. He was driver of the goods carriage bearing No.TN 07K 1900 and on the alleged date of accident i.e., 05.03.2001 he was driving the truck with cylinders load from GDR Cylinder Company, Renigunta to Chennai and in transit near Periyapalem, the tyre of the truck was punctured and when he was attending the work of replacing the tyre on the left side of the road, the bus of respondent dashed him. Had there been any precaution taken by him giving an indication with blinking lights or the like, accident could be averted to say there is no total fault of bus driver, that too, it is before sun rise at about 5.30 am or so. Thus, there is a contribution of him to the accident, which can be equal

for the principle of finder of last opportunity has no strict application to the facts on hand, though to some extent it can be taken into consideration. Having regard to the above, the respondent (TNSRTC) is liable for 50% of compensation.

6) Coming to the quantum, from the photo reflecting and also from the disability certificate even no doctor examined from the credentials of the Vellore hospital record, from his age shown in the claim petition as 47 years as on the date of accident and the multiplier applicable is '13', even taken his earnings as Rs.3,200/- per month, for 25% disability, it comes to Rs.1,24,800/- (Rs.3,200/- X 12 X 13 X 25%). Apart from it, Rs.9,600/- towards loss of earnings even taken for three months, Rs.20,000/- towards medical expenses and treatment, Rs.10,600/- towards attendant charges, transport charges, extra nourishment, in all it comes to Rs.1,65,000/-. Out of it, 50% of compensation therein comes to Rs.82,500/- is the just compensation.

7) Accordingly and in the result, the appeal is partly allowed by enhancing the compensation from Rs.15,000/- (Rupees fifteen thousand only) to Rs.82,500/- (Rupees eighty two thousand five hundred only). In other respects the award of the Tribunal holds good.

Consequently, Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.27.10.2016
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