

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

MACMA No.627 of 2010

JUDGMENT:

The appellant/Managing Director of APSRTC herein is the respondent of M.V.O.P. No.304 of 2004 dated 15.12.2008 on the file of Chairman, Motor Accident Claims Tribunal-cum- District Judge, Chittoor, where the claim petition filed under Section 166 of the Motor Vehicles Act for compensation of Rs.5,00,000/- by the claimant, who are no other than the wife, two minor children of the deceased Chenamurthy, who died of the motor accident on 12.06.2004 while proceeding with one Ubedulla on a motor cycle bearing registration No.TN 23 P 1427 to go to petrol bunk to fill bike petrol tank, RTC bus bearing No. AP 10 Z 6114, allegedly came in a rash and negligent manner from Kuppam towards V.Kota, hit the motor cycle. On contest by RTC including through the evidence of the driver, the Tribunal having held that the accident was the result of negligent driving of the driver of the bus alone by disbelieving his version and believing the version of PW.2, so called eye witness, awarded compensation of Rs.3,90,000/- with interest @ 9% per annum and the same is now impugned on several grounds including the deceased is responsible and the driver of the bus is not at all responsible and that non-joinder of necessary parties i.e. owner of the motor cycle and insurance company also fatal to the case and that the Tribunal ignored the contributory negligence on the part of the rider of the motor cycle. The other contention is compensation and rate of interest also excessive and requires reduction. Therefore, the present appeal is maintained.

Whereas, it is the contention of the learned counsel for the claimant that the findings of the Tribunal holds good and the compensation awarded is just and requires no interference while sitting in appeal but for dismissal of the appeal.

Heard both sides. Perused the material available on record.

The second claimant is the informant, who set the law into motion and his version in Ex.A.1-FIR, which also covered by Ex.A.5-charge sheet is that he and the deceased while riding the bike proceeded at one place stopped and wanted to fill the tank of the bike with fuel and taken with him pillion rider Ubedulla and after some time he came to know that his father died in the bus accident at the petrol bunk area and the pillion rider also sustained serious injuries and shifted to hospital. From the very FIR contents and evidence of RW.2, the deceased went to petrol bunk. From the evidence on record, the road is running from north to south towards west, if proceeded on one side towards Kuppam, the bus is coming from Kuppam to V.Kota and unless the deceased contributed while crossing the road to go to the petrol bunk the accident could not be resulted though major contribution is that of the bus driver. Thus, it is also laid down by the Apex Court in **Municipal Corporation of Greater Bombay v Shri Laxman Iyer and another**¹. The consideration of the contributory or composite negligent depends upon several features, size of the vehicle, conditions of the road, MVI report and scene observation particulars as to which portion of the vehicle damage is caused and on road where lying as to decide fault and with what contribution. Here, these facts are not there for back drop not subjected to examination, but for the bus by MVI, scene

¹ AIR 2003 SC 4182

observation report. Road is national high way road. Thus following the expression similar to the facts of bike and bus 20% contribution of the deceased can be taken.

Now coming to the quantum, the deceased was shown aged 45 years as per Ex.A.3-postmortem report. The multiplier applicable as per **Sarala Varma v Delhi Transport Corporation and another**² is '14' and what the Tribunal taken '15' is unsustainable. Coming to the earnings of the deceased to claim that he possessed lands, there from there is no evidence. Admittedly, from cross examination of PW.1 the Tribunal taken Rs.3,000/- per month. The accident was occurred on 12.06.2004. As per decision of the Apex Court in **Latha Wadhwa v State of Bihar**³ held that even there is no proof of income and earnings, it can be reasonably estimated minimum Rs.3,000/- per month. Therefore, from the accident, it is just to arrive the monthly earnings at Rs.3,400/- per month and after deducting 1/3 taken towards personal expenses, which comes to (Rs.2262/- x 12) Rs.27,204/- x 14 = Rs.3,80,856/- rounded to Rs.3,81,000/-, Rs.50,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of estate and Rs.20,000/- towards care and guidance to two minor children. Thus, total compensation of Rs.4,86,000/- is the just compensation. 80% of the contribution comes to Rs.3,88,640/-. Thereby, what the Tribunal awarded is Rs.3,90,000/- no way requires interference. But for rate of interest is reduced from 9% per annum to 7.5% per annum.

Accordingly, and in the result, the appeal is allowed in part while holding that the deceased also contributed 20% to the accident while crossing the road to go to the petrol bunk. So far as quantum

² 2009 ACJ 1298 (SC)

³ 2001(8) SC3218

is concerned, there is nothing to reduce, but for the rate of interest is reduced from 9% per annum to 7.5% per annum. There is no order as to costs.

Miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

28.11.2016
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