

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.1901 of 2010

JUDGMENT:

The 2nd respondent—RTC maintained the present appeal impugning the award passed on 03.11.2009 in O.P. No.240 of 2008 on the file of Judge, Family Court-cum-Additional District Judge-cum-Motor Accidents Claims Tribunal, Ongole (for short 'the Tribunal'), which is maintained by mother of deceased Sekhar Babu, under Section 166 of the Motor Vehicle Act, 1988 (for short 'M.V. Act') for compensation of Rs.5,00,000/-, for the accidental death of the deceased, from the contest by 2nd respondent including by examination of 1st respondent—driver as RW.1 and from the evidence of sole claimant as PW.1 and PW.2, who is an eye witness to the accident with reference to Exs.A1 to A4, attested copies of FIR, MVI report, Inquest report and charge sheet respectively, the Tribunal granted compensation of Rs.3,33,500/- with interest at 9% per annum fixing liability on the RTC and its bud driver as total negligence is on the part of driver of the bus (for no fault of driver of mini lorry) in which the deceased and other persons were travelling that resulted the accident.

2) It is the contention of the learned standing counsel for RTC that the Tribunal gravely erred in awarding compensation, which is highly excessive and exorbitant, without following the principles of procedure under the M.V Act and failed to see that the deceased was aged about 19 years, who is travelling in the

mini lorry and due to its driver's rash and negligent driving the lorry dashed the bus for fault of the bus driver, from the evidence of RW.1 while both vehicles were proceeding in opposite direction and the alleged accident was due to head on collision and non-joinder of the driver, owner and insurer of the mini lorry is fatal to the maintainability of the claim petition that was not considered by the Tribunal and the Tribunal should have been apportioned equal liability on the mini lorry driver and the bus driver at best, and also went wrong in adopting the multiplier instead of taking the age of the mother in taking the age of deceased, that is entitled only during her life time and thereby, prayed to reduce the compensation and rate of interest.

3) Whereas it is the contention of the learned counsel for respondent—claimant that the award of the Tribunal holds good and for this Court while sitting in appeal, there is nothing to interfere, hence prayed to dismiss the appeal.

4) Heard learned standing counsel for the RTC and learned counsel for respondent—claimant. Perused the material on record.

5) The appreciation of evidence is not only from the oral evidence adduced before the Court with reference to any documents placed on record but also from attending circumstances. The evidence of PW.2 so-called eye witness is as if the bus driver is at fault. The evidence of RW.1 bus driver is as if mini lorry driver at fault. Thereby herein, it is important to

consider the material on record in fixing liability whether both are at fault or only one of them alone at fault and if both are at fault what is the contribution in their composite negligence that to be taken.

6) The important documents in this regard are Ex.A2—MVI report and Ex.A1—FIR. The MVI report clearly shows the mini lorry is not even produced for examination of the Motor Vehicle Inspector. Damage caused to the bus is on drivers' side how the screen glass broken and glass of right side corner cabin broken, that too, on right side. Post mortem report of the deceased shows A cut injury of 4 X 1 cm in size above and behind the left eye, A cut injury of 6 X 1 cm in size on left side of skull 3cm behind the injury No.1, A compression mark towards back of chest on left side and internal examination shows Skull fracture on left side and on the back. Membrane loss on left side and on the back (brain injured on the back and left side) free blood present in subdural space and behind the skull, neck and throat hyoid infact, ribs –left side fractured laterally. Left side lungs congested laterally and from the above injures and from shock and haemorrhage the death was resulted.

7) Coming to Ex.A1—FIR, which set the Criminal law in motion, there are 19 persons or so that were travelling by sitting on the top of the mini lorry at the time of accident and it is in the way towards Regada Village 5 Kms away to Kandukur showing towards Kanigiri Road, the opposite coming bus of appellant

driven by 2nd respondent to the appeal (1st respondent to the claim petition) RW.1—K.Narasimham allegedly dashed the mini lorry on the right side portion of the mini lorry and therefrom the right side portion of the body of the mini lorry is removed from the cabin of the mini lorry and fallen on the road and the persons sitting on the right side portion of the mini lorry fell down including the person who set the law in motion and the deceased among others only seven in number. Some persons in mini lorry not sustained injuries and some of them, who sustained injuries were shifted by securing a passing through auto to Government Area Hospital, Kandukur. It clearly shows mini lorry right side portion is damaged but not the front portion right side cabin even from the FIR and the bus and the mini lorry were proceeding in opposite direction and it is early morning at about 4.30 am or so. It clearly demonstrates that the front portion of the right side of the bus and the right side body and the front engine portion of the mini lorry came in contact shows in attempting to avoid accident, this accident occurred but for the contribution by the drivers of both the vehicles, the accident could not be occurred in that manner. Had the bus driver rightly proceeded could not on wrong side dashed the mini lorry front portion wherefrom at the engine side of the mini lorry damaged. That itself clearly speaks of their contribution. Scene observation report is not filed and no evidence adduced with regard to size and condition of the road and as to which vehicle was on the right side and which on wrong side at the time of accident and towards which direction. It is not

a case of another vehicle while crossing the junction coming in contact but while proceeding in opposite direction. Thus, the contributory negligence since depends on several factors as to the condition of the road, size of the vehicle, extent of damage caused to the two vehicles, it is just to fix atleast 25% contribution by driver of the mini lorry for remaining 75% of the RTC bus driver.

8) Now coming to the quantum of compensation, the accident was on 30.12.2006. The deceased was shown as 19 years as per post mortem report. From the evidence on record, the Tribunal assessed the age of petitioner at 60 years even taken the estimation of the earnings from the evidence on record shows deceased person was also proceeding for collie work along with other coolies from different villages on the goods lorry. As per the expression of the Apex Court in **Lata Wadhwa vs State of Bihar**¹ of minimum Rs.3,000/- per month and in case of minor even taken from that expression Rs.2,500/- with proportionate increase to the date of accident more than 5 years later Rs.3,200/- per month taken. Here it is the sole claimant no other than mother of the deceased, if half deducted towards personal expenses, it comes to Rs.1600/-. The multiplier applicable from the age of the mother even taken at 50-55 years, the multiplier applicable for the age group between 51-55 is '11'. The dependency thereby comes to Rs.2,11,200/- (Rs.1600 X 12 X 11). Apart from it, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of estate, in all it comes to Rs.2,46,000/-. Out of it,

¹ AIR 2001 SC 3218

75% therein comes to Rs.1,84,650/- rounded to Rs.1,85,000/- is the just compensation and the respondent No.1—owner of the mini lorry is directed to pay the remaining 25% of compensation, arrived at Rs.61,000/- to the claimants.

9) Accordingly and in the result, the appeal is partly allowed as follows:

i) The claimant can proceed against the mini lorry owner and insurer. No doubt under Section 168 of M.V. Act and from the Three Judge Bench expression of the Apex Court in ***Khenyei vs New India Assurance Company Limited***² the non-impleadment of other joint tortfeasors even contributory negligence fixed is not fatal, for recovery of the claim against those impleaded but for to enable the joint tortfeasors to pay the claim and recover.

ii) So far as the rate of interest is concerned, the Tribunal awarded at 9% per annum, which is excessive as per the expression of the Apex Court in ***TN Transport vs Raja Priya***³ and ***Rajesh vs Rajbir Singh***⁴, wherein the Apex Court granted rate of interest at 7.5% per annum is just and reasonable, hence the rate of interest should be reduced from 9% per annum to 7.5% per annum.

iii) The appellant is directed to pay the claim made and recover an amount of Rs.61,000/- from the owner and insurer of

² 2015 (9) SCC 273

³ 2005 (6) SCC 236

⁴ 2013 ACJ 1403

the mini lorry after payment/ deposit of total amount of Rs.2,46,000/- with interest at 7.5% per annum on filing execution petition in the self same award before the Tribunal. No order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Dt.23.11.2016
knl



HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.1901 of 2010



Date: 23.11.2016

Knl