HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.Nos.609 & 299 of 2010

COMMON JUDGMENT:

These are the two appeals maintained by the 2nd respondent insurer among the 2 respondents including the owner of the private bus bearing No.KA-07-C-7777, impugning the award of the Tribunal respectively in O.P.No.196 of 2007 dated 17.07.2008 of the claim under Section 166 MV Act for Rs.4,50,000/- maintained by 6 claimants no other wife, 2 minor daughters and minor son and parents of deceased Hassan Saheb @ Hassi aged about 36 years and another O.P.No.264 of 2007 dated 17.07.2008 of the claim for Rs.5,00,000/- maintained by 4 claimants no other than wife, minor daughter and son and mother of the deceased Koona Venkatesh Babu aged about 43 years as per Ex.A4 showing from the High School T.C. born on 01.06.1964, by the date of their accidental death on 12.06.2007 while deceased Babu and pillor rider Hassi were proceeding in TVS bike bearing No.AP-03-Q-3397, from the contest by the insurer from owner remained exparte since the Tribunal awarded in O.P.No.196 of 2007 a sum of Rs.3,37,000/- with interest @ 7.5% per annum and in O.P.No.264 of 2007 an amount of Rs.3,37,000/- with interest @ 7.5% per annum, having held that the accident was the result of the contribution of the deceased persons in proceeding on their two wheeler at the turning of Mulbaghal cross on Ramasamudram and Sreenivasapuram road of Chittoor District, maintained the 2 appeals with the contentions of the appellant/insurer that Tribunal gravely erred in not fixing percentage of the contributory negligence on the part of the deceased persons contributed to the accident and having arrived 1/4th of the amount as contribution and taking half of it again is unjust and thereby quantum of compensation is also excessive, hence to reduce by properly applying proportionate contribution by the deceased persons. Though one of the contentions raised is the imperfect license of the driver of the bus same is not pressed from the driver shown possessing transport bus license and the other contention regarding deceased K. Venkatesh Babu rider of the TVS bike was not having license is part of the consideration for contributory negligence to fix from any lack of any experience in riding bike to presume from no license and nothing to do with joint liability to indemnify.

Whereas it is the submission of the learned counsel for the claimants that the award of the Tribunal holds good but for no cross objections to enhance sought for dismissal of the 2 appeals.

Heard and peruse the material on record.

The fact that the deceased K. Venkatesh Babu along with pillion rider by name V. Hassan Saheb @ Hassi were proceeding on TVS moped bike bearing No.AP-03-Q-3397 and the insurer and owner not parties to the case not in dispute and there is head on collision of the bus belongs to the 1st respondent of the claim petition and the deceased persons proceeding on the 2 wheeler also made out right from Ex.A1-FIR and A4-charge sheet but also from Ex.B1-rough sketch, cross examination evidence admissions of PWs.1 and 2 so also the factum of rider has no license. The Tribunal was having discussed particularly in the 2 awards at Paras 8 and 9 which further read besides PW.1 is not an eye witness to construe as binding admission from deposed of there is head on collision between 2 vehicles, from what the charge sheet and evidence of PW.2 clearly show the accident taken place while negating the curve and even PW.2 deposed of there is high speed with which the bus was driving hardly unbelievable as this part at the negating the curve in the event no possibility of proceeding such speed to believe from the rough sketch-Ex.B1 depicts the bus is not even on extreme wrong side much less on middle of road in coming to the conclusion of the deceased persons also proceeding in the bike contributed to the accident. From said evidence, the Tribunal should have been fixed the percentage in similar facts of a private bus and 2 wheeler collision, the Apex Court in **Municipal Corporation of Greater Bombay Vs. Laxman Iyer and Another**[1] held that it is a fit case to the 25% by the two wheeler rider and 75% contribution by the bus driver. Once same is the contribution of the deceased persons to the accident to be taken their claim to that extent if any is against the owner and insurer of the 2 wheeler that too when the claim is under Section 166 MV Act and that too there is cross appeal from the claimants against that finding of contribution and arriving however in saying $1/4^{th}$ deducted half out of it wrongly from the same is now impugned in ascertaining the percentage, though otherwise a joint tort feasor not made party no way fatal, leave about Section 168 of the MV Act enables so to determine even the three Judge Bench expression in **Khenyei Vs. New India Assurance Co. Ltd. & Others**[2] held that non impleadment of joint tort feasor no way fatal but for to seek

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[1] (2003) 8 SCC 731
[2] 2015 (6) SCC 273

contribution by the owner and insurer impleaded later, the facts are entirely different from what is discussed supra.

From this now coming to the quantum of compensation, the age of the deceased K. Venkatesh Babu of O.P.No.264 of 2007 is 43 years as per Ex.A4 and as per the finding of the Tribunal at Para 12. Once such is the case, from the claim under Section 166 of MV Act multiplier 14 is applicable and not what the Tribunal taken of 15 and the age of the deceased Hassi is 36 years from the PM report and evidence on record as held by the Tribunal at Para 12 and multiplier 15 is applicable. Coming to the earnings of the deceased and percentage of personal deductions, the Tribunal in each of the 2 cases taken Rs.3,000/- per month. The accident was dated 12.06.2007 as per the **Latha Wadhwa vs. State of Bihar**[3] in the absence of proof of income a minimum of Rs.3,000/- to be taken and from the date of accident it can be taken Rs.3,600/- per month. So far as O.P.No.264 of 2007 claim for deceased Venkatesh Babu, there are 4 claimants as dependants, 1/4th can be deducted towards personal expenses as per **Sarla Verma v Delhi Transport Corporation**[4] and similarly in so far as death of Hassi there are 6 claimants and from the above expression, above 3 and up to 6 is 1/4th and above 6 is 1/5th, here also 1/4th towards personal expenses deducted from the above.

So far as MACMA.No.299 of 2010 (O.P.No.264 of 2007) amount to be arrived concerned, Rs.3,600/-x3/4=Rs.2,700/-x12x14=Rs.4,53,600/- + Rs.50,000/- towards loss of consortium to the wife of the deceased, Rs.25,000/- towards funeral expenses,

[3] (2001) 8 SCC 197=AIR 2001 (SC) 3218
[4] 2009 ACJ 1298.

Rs.10,000/- towards loss of estate and Rs.20,000/- towards care and guidance to the minor children, which comes to Rs.5,58,600/- x75/100=Rs.4,18,950/- what the Tribunal awarded of Rs.3,37,000/- with interest @ 7.5% per annum no way requires interference but for no cross objections to enhance after deducting 25% contribution of the deceased.

So far as MACMA.No.609 of 2010 (O.P.No.196 of 2007) amount to be arrived concerned, Rs.3,600/-x3/4=Rs.2,700/- x12x15=Rs.4,86,600/- + Rs.50,000/- towards loss of consortium to the wife of the deceased, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of estate and Rs.30,000/- towards care and guidance to the minor children, which comes to Rs.6,01,500/- x75/100=Rs.4,50,750/- what the Tribunal awarded of Rs.3,37,000/- with interest @ 7.5% per annum no way requires interference but for no cross objections to enhance after deducting 25% contribution of the deceased.

Accordingly and in the result, the appeals are partly allowed while holding that there is 25% contribution by the deceased persons in both the claims, however the quantum of compensation no way requires interference, but for no cross objections to enhance. In other aspects the award of the Tribunal holds good.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 08.11.2016
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