

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A No.315 OF 2010

JUDGMENT:

The claimants are wife and two minor children of deceased by name Upputholla Peraiah, aged between 35 – 40 years with reference to evidence on record including Ex.A5—post mortem report, maintained M.V.O.P. No.1277 of 2008 on the file of Motor Accidents Claims Tribunal—cum—IV Additional District Judge, Guntur (for short ‘the Tribunal’) against two respondents i.e., owner and insurer of bus bearing No.AP 16 TW 7273 for a compensation of Rs.3,50,000/- under Section 163-A of Motor Vehicles Act (for short ‘the Act’) for the accidental death of deceased. The Tribunal, after contest by the 2nd respondent—insurer, from 1st respondent—owner remained exparte, from the evidence on record having held on issue No.1 in deciding the negligence of equal contribution by deceased to make the respondents only 50% liable and arrived at Rs.2,07,000/- with interest at 7.5% per annum vide award dated 28.10.2009. Impugning the same, the claimants maintained the present appeal.

2) Heard both sides at length. Perused the material on record.

3) A perusal of the evidence on record before the Tribunal covered by Exs.A1 to A5, PWs.1 and 2 including from the so-called eye witness to the accident, the Tribunal came to the conclusion that the accident was the result of rash and negligent driving of the driver of the bus and from the place of accident and manner of accident and deceased succumbed to skull injury by fall from the bike. In fact, the claim is maintained under Section 163-A of M.V. Act, such a finding does not arise. It is clearly a claim decided by the Tribunal under

Section 166 of the Act in the evidence let in by both parties and proceeded under Section 166 of the Act. Once such is the case, the appeal will not decide within the scope of Section 166 of the Act but not under Section 163-A of the Act, as the law is fairly settled from the three judge bench expression of the Apex Court in **Deepal Girishbhai Soni vs United India Insurance Company Limited**¹ of even two provisions mentioned option is still available to the claimant of letting in evidence or Tribunal to consider.

4) Once such is the case, now to decide the appeal by proceeding under Section 166 of M.V. Act. The evidence on record with reference to Ex.A5—post mortem report shows that the deceased was fallen from the bike and the death is outcome of skull fracture but not any crush injury of the opposite vehicle of the respondents 1 and 2. The claimants not produced the bike to show any damage. Once these facts are proved from the evidence on record, the accident was occurred in the junction while taking curve. What the contribution fixed by the Tribunal on the deceased is sustainable but for to decide the quantum of compensation. Similarly the Apex Court clearly held the distinction between negligence, sole negligence, contributory negligence and composite negligence in **Municipal Corporation of Greater Bombay vs Laxman Iyer**². By applying the same analogy to the present facts, 25% contribution on the deceased of two wheeler and 75% contribution on the bus driver.

5) Coming to the earnings of the deceased, at the time of accident on 18.09.2008, from the evidence of PW.1, the deceased working as a mason and earning Rs.120/- per day, therefrom the

¹ 2004 (5) SCC 385

² 2003 (8) SCC 731

Tribunal has taken Rs.3,000/- per month as per the expression of the Apex Court in ***Latha Wadhwa vs State of Bihar***³. However, from the evidence on record, as referred supra, the deceased was earning Rs.120/- per day even there from availing of one holiday per a week, it is just and reasonable to take Rs.3,400/- per month, after deducting 1/3rd towards personal expenses for the three claimants, it comes to Rs.2,267/-, the multiplier applicable for the age of the deceased is '15', the loss of dependency comes to Rs.4,08,060/- (Rs.2,267/- X 12 X 15). Apart from it, the claimants are entitled to Rs.50,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of estate, Rs.20,000/- towards care and guidance to the minor children, in all it comes to Rs.5,63,060/- rounded to Rs.5,63,000/-. Out of it, 75% liability of the respondents therein comes to Rs.3,84,750/- rounded to Rs.3,85,000/- is the just compensation.

6) Accordingly and in the result, the appeal is partly allowed by enhancing the compensation from Rs.2,07,000/- (Rupees two lakhs seven thousand only) to Rs.3,85,000/- (Rupees three lakhs eighty five thousand only) subject to payment of deficit court fee for Rs.50,000/- under Rule 475 of A.P. M.V Rules, failing which the claimants are not entitled to execute the award and the claimants are not entitled to interest on the enhanced amount but from today till realization. The Insurance Company shall deposit said amount within one month from the date of the receipt of the order, failing which the claimants can execute and recover.

³ AIR 2001 SC 3218

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

Dt.27.10.2016
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Dr. B. SIVA SANKARA RAO, J

