HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A. No.613 of 2010

JUDGMENT :

The appellants-claimants are the parents, aged about 50 and 44 respectively of the deceased by name, B.Venkateswararao @ Srinviasarao, aged about 18 years. They maintained the claim under Section 163-A against the APSRTC and its driver of the bus bearing No.AP 10 Z 2340, for the accidental death on 26.08.2004, with averments that the deceased was doing milk business and taking cans to supply milk on cycle and while returning with empty cans, the APSRTC bus plying between Kakinada-Pitapuram, within the limits of Sarpavaram Police Station, due to the rash and negligent driving of its driver, dashed the cycle of the deceased, as a result, he fell down and sustained head injury and died on the spot, vide Crime No.169 of 2004 under Section 304-A IPC against the bus driver. In the claim maintained by them for Rs.5,00,000/- before the Motor Accidents Claims Tribunal-cum-IV-Additional District Court, East Godavari District (for short, 'the Tribunal'), the Tribunal after contest including from the evidence of 1st respondent-driver of the bus as RW.1 with reference to the evidence of PWs.1 to 3 and Exs.A.1 to A.11 held that the accident was the result of the rash and negligent driving of the driver of the bus of 1st respondent and from the counter of the 1st respondent-RW.1 also speaks at the time of accident the deceased was returning on cycle with empty milk cans on rear and front side to his riding seat and arrived the earnings of the deceased by estimation at

Rs.15,000/- per annum as per II Schedule of the Act of the claim under Section 163-A in awarding compensation of Rs.1,62,000/- with interest at 6% per annum vide O.P.No.68 of 2005 dated 25.04.2007.

2. The contentions in the grounds of appeal vis-à-vis the oral submission of the learned counsel for the claimants/appellants are that the Tribunal gravely erred in not taking the proper multiplier and the earnings estimated are also utterly low and several conventional sums not even awarded and hence to allow the appeal as prayed for including by enhancing the rate of interest.

3. The learned counsel for APSRTC submits that award of the Tribunal holds good and the Tribunal proceeded the claim according to II Schedule and Section 163-A of the Act and for this Court while sitting in appeal there is noting to interfere including with the discretionary rate of interest at 6% p.a. as can be seen from the Apex Court expression in **Sarla Verma vs. Delhi Transport Corporation**[1], and hence to dismiss the appeal.

4. Heard and perused the material on record.

5. The fact that the accident was the result of the bus in use from the evidence of the bus driver as RW.1 vis-à-vis, the counter of APSRTC apart from F.I.R. and charge sheet against the driver of the deceased was proceeding on his cycle with empty milk cans and the bus dashed. It is not a case of the deceased that he fell down of his own and bus not involved to believe thereby.

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[1] 2009 ACJ 1298

6. So far as the avocation of the deceased as milk vender or not is concerned, the Tribunal came to the conclusion from the so-called municipal tax payment receipts, the deceased is a milk vendor and he is a member of the Milk Vendors Association, though there can be an inference to be drawn of the empty milk van itself presupposes, the deceased was doing some avocation connected with milk business itself. No doubt, the claim is under Section 163-A of the Act. There is no proof of earnings. It is not a claim under Section 166 of the Act referring to Sarla Varma supra to adopt the multiplier thereunder. Though earnings of Rs.15,000/- per annum to be taken into consideration in the absence of proof of earnings as per Schedule-II. However, as per the expression of the Apex Court in **Kishangopal vs. Lala**[2] following Schedule-II of the Act under Section 163-A of the Act as guidance, Rs.15,000/- p.a. minimum for non-earning member to take is to read as Rs.30,000/- p.a.. The multiplier to be taken from the age of parents as per II-Schedule is '14' from the expression. If 1/3rd is deducted towards personal expenses of the deceased, it would come to Rs.2,80,000/- (Rs.30,000 x 14 x 2/3). Apart from it, the claimants are entitled to Rs.4,500/- towards loss of estate and funeral expenses. Thus, the total compensation arrived at Rs.2,84,500/-, rounded to Rs.2,85,000/- which is just compensation.

7. So far as the rate of interest is concerned, the Tribunal awarded interest at 6% p.a., which is too low, as per the settled expression of

[2] 2014 (1) SCC 257

the Apex Court in **TN Transport v. Raja Priya**[3] and **Rajesh v. Rajbir Singh**[4], wherein the Apex Court was granted interest at 7.5% per annum, which is just to award.

8. Accordingly, the appeal is allowed in part by enhancing the compensation from Rs.1,62,000/- to Rs.2,85,000/- (Rupees two lakhs eighty five thousand only) with interest at 7.5% per annum. Rest of the terms of the award of the Tribunal holds good.

9. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

Dr. B. SIVA SANKARA RAO, J

29th November 2016.

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[3] 2005 (6) SCC 236
[4] 2013 ACJ 1403