

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CMA No.3896 OF 2004

JUDGMENT:

The 2nd respondent-APSRTC among the two respondents including the driver of the bus bearing No.AP 9Z 9970, impugning the award of the tribunal dated 09.06.2003 in O.P.No.150 of 1998 on the file of the learned Chairman of the Motor Accidents Claims Tribunal-cum-District Judge, East Godavari at Rajahmundry (*for short, 'Tribunal'*), filed u/s. 166 of the Motor Vehicle Act,1988 (*for short, 'the Act'*), maintained by the three claimants no other than the wife and two minor children and respondents 4 and 5 (divorced wife of the deceased and her son) of the deceased Suryanarayana, aged about 40 years made claim for Rs.2,00,000/- against two respondents driver and APSRTC(appellant herein) since awarded of Rs.1,82,000/- with interest at 6%p.a., fixing joint liability, impugning the said quantum and fixing of liability holding rash and negligent driving of the bus driver, preferred the appeal saying as per the Ex.A.2 postmortem report the deceased was under intoxicated condition while riding cycle at the time of accident and thereby the tribunal ought to have considered the factum vis-a-vis the evidence of R.W.1 bus driver in disbelieving the claim holding that the accident was the result of negligence of the deceased apart from P.W.2 eye witness is not a witness but planted for case purpose and thereby allow the appeal by exonerating the APSRTC-appellant.

2. Learned present standing counsel for the appellant reiterated the same in the course of hearing. Whereas, it is the contention of the learned counsel for the claimants that the award of the tribunal holds good and for this Court while sitting in appeal there is nothing to

interfere but for no cross-objections to enhance and sought for dismissal.

3. The accident was dated 09.02.1997. Ex.A.2 Post mortem report shows the deceased was aged about 40 years. The Post mortem report shows there are symptoms of alcohol contents, therefrom he was not in a position to ride cycle. even taken the same as true, it is the duty of the bus driver to drive the bus carefully controlling it rather than dashing against the cyclist with such a condition that is suffice to say accidental death of the deceased was the result of rash and negligent driving of the bus driver. The claim is under Section 166 of the Act. The age is about 40 years, the multiplier to be taken as per **Sarla Varma v. Delhi Transport Corporation**¹ is 14 for the persons of age 41 to 45, though tribunal taken 15 for 36 to 40. Thus instead of 15, it is to be taken as 14.5 as pointed out by the learned counsel for the APSRTC. The earnings of the deceased as on the date of accident, they claimed as Goldsmith and earning 150/- per day but the tribunal has taken Rs.15,000/- p.a. At the time of the accident from the avocation is Goldsmith not in dispute the earnings including prospective earnings at least should have been taken at Rs.2,400/- p.m. The claimants are three in number, out of that 1/4th deducted as per **Sarla Verma** supra, it comes to $1800 \times 12 \times 14.5 = \text{Rs.}3,13,200/-$ + loss of consortium of Rs.50,000/-, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of estate and Rs.30,000/- for care and guidance of three minor children, it comes to Rs.4,28,200/-. Thus, what the compensation awarded by the tribunal of Rs.1,82,000/- with interest at 6%p.a. no way excessive but for no cross-objections to enhance.

¹ 2009 ACJ 1298

4. In the result, the appeal is dismissed. There is no order as to costs in the appeal. Consequently, pending miscellaneous petitions, if any, in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:09.08.2016
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