

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA No.550 OF 2011

JUDGMENT:

The 2nd respondent-APSRTC represented by its Managing Director, Musheerabad, Hyderabad, owner of the bus bearing No.AP11-Z-357 of the M.V.O.P.No.42 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal–cum-Prl. District Judge, East Godavari, Rajahmundry (for short, 'the Tribunal') the claim maintained under Section 163-A of the Motor Vehicle Act,1988 (*for short, 'the Act'*), by 6 claimants viz; wife, children and parents of the deceased by name Y.V.V.S.Surya Prasadarao, for his death in the accident on 23.11.2005 claiming compensation of Rs.12,50,000/-(Rupees twelve lakhs fifty thousand only), preferred this appeal aggrieved by the award dated 16.01.2009 passed by the tribunal granting compensation of Rs.6,12,500/- with interest at 7.5% p.a. with proportionate costs by fixing liability against the 2nd respondent-appellant herein, with the contentions in the grounds of appeal as well as during the course of arguments that tribunal gravely erred in not considering the fact that the deceased was negligent and not applied the principle of *res ipsa loquitor* that the tribunal failed to see that the version of the claimants showing the driver of the bus came in high speed in wrong side and dashed to the deceased while crossing the road, but in the evidence of P.W.2 he deposed that the deceased standing at a distance of 50 yards from him and the bus dashed him as the such the same cannot be believed, that the court wrongly assessed the income of the deceased at Rs.6,250/- p.m. without any evidence and the multiplier adopted is wrong, hence to set aside the award of the tribunal.

2. Whereas, it is the contention of the learned counsel for the respondents 1 to 6/claimants (from the R.1-driver of the bus endorsed not necessary party to the appeal) of whom R.6 endorsed died and others on record being her legal heirs, that there are no grounds to

interfere with the award and hence to dismiss the appeal.

3. Heard and perused the material on record.

4. The finding of the tribunal is very clear that the accident was the result of the rash and negligent driving of the bus driver. The R.W.1 bus driver though claimed that he was not at fault but for deceased; it was from perusal of the record including of P.W.1, P.W.2 and Ex.A.2, A.4 to A.6 is clear that what R.W.1 deposed of the deceased suddenly was crossing the road and there was no opportunity to him to apply brakes suffice to say it was rightly concluded by the tribunal that the accident was the result of rash and negligent driving of driver-R.W.1 of the bus; The tribunal disposed of the claim u/sec.166 MVA Act with clear finding of the rash and negligent driving of the bus driver. As per the expression of **Sarla Verma v. Delhi Transport Corporation**^[1] referred in **Rajesh v. Rajbir Singh**^[2], even in case of self-employment, the prospective increase of earnings to be taken and where the dependants are more than 5, 1/5th deduction of personal expenditure of deceased is to be taken. Coming to earnings, the deceased was claimed running kirana shop. Even taken the earnings of the deceased with prospective increase at Rs.5,000/- p.m. If 1/5th is deducted towards personal expenses for all the claimants are dependents, it comes to Rs.4000x12x 14 = Rs.6,72,000/- that applies to a person aged between the 41 to 45 as per Sarla Verma supra. Apart from it Rs.1,00,000/- towards consortium, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of estate and Rs.30,000/- towards care and guidance of the minors taken, what is awarded by the tribunal, is utterly low to enhance but for no cross-objections, there is nothing to interfere with the award of the tribunal.

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

Dr. B. SIVA SANKARA RAO, J

Date: 22.04.2016

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[\[1\]](#) 2009 ACJ 1298

[\[2\]](#) 2013(4)ALT 35(SC)