HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

MACMA No.2714 OF 2011

JUDGMENT:

Heard Sri S.V. Ramana, learned counsel for the appellant and Sri V.L.N.G.K. Murthy, learned counsel for the respondents.

02. The appellant is the APSRTC. The respondents 1 and 2 are the claimants and the 3rd respondent is the driver of the bus.

03. The claim petition is maintained by the respondents 1 and 2 - claimants for the death of their mother, claiming compensation under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for Rs.7,95,000/-, in the accident dated 09.02.2008 while the deceased and her husband were traveling in the Maruthi Esteem Car bearing No.AP 16 AF 6822 to attend some marriage, it is allegedly due to rash and negligent driving of the driver of the RTC bus bearing No.AP 11 Z 4445 examined as R.W.1, while overtaking the lorry dashed the opposite coming Maruti Car in which the deceased persons were traveling, as a result besides the car driver, two persons traveling in the rear seat viz., the deceased and her husband were succumbed to the injuries, no one remained as the car was crammed under the bus, it itself speaks the manner of accident and rash and negligent driving of the bus driver and the Tribunal rightly came to the conclusion and awarded compensation for no fault of the driver of the car. Needless to say, even if there is contention that the driver of the Maruthi car also contributed and the owner and insurer not parties to the claim, the same not available as per latest expression of the three Judges Bench of the Apex Court in **Khenye v. New India Assurance Company Limited & others**[1], remedy of one of the joint tort feasor, who is impleaded can sue the other joint feasors in independent proceedings for apportionment, non impleadment of other joint tort feasors cannot be a ground.

04. Needless to say, so far as the allegation contribution is concerned, once the Tribunal came to the conclusion, the appellate court shall not easily interfere merely because the accident occurred while both the vehicles coming in opposite vide expression in **Jiju Kuruvila & Others vs. Kunjujamma Mohan & others**[2]. Having regard to the above, the said contention of RTC is not available but for remedy as otherwise referred to supra.

05. Now coming to the quantum, the deceased is a house wife and post graduate and also discussed by the Tribunal in paragraph 8 of the award, she studied M.Sc. Physics and M.Ed. English and earning Rs.10,000/- per month. No doubt the Tribunal allegedly not believed the earnings since no proof of earnings and taken Rs.3,000/- per month.

06. In fact, as per the expression of the Apex Court in **Latha Wadhwa v. State of Bihar**[3], as referred by the Tribunal, in the absence of proof of earnings even house wife, contribution of Rs.3,000/- can be taken per month, after the expression there is 7 years gap to the date of accident and even the earnings of the deceased at Rs.3,700/- per month taken, if 1/3rd deducted towards her personal expenses, it comes to Rs.2,466/- per month and the application of multiplier 11 for the persons aged between 51 to 55 as per the expression in **Sarla Verma v. Delhi Transport Corporation**[4], the loss of earnings comes to Rs.3,25,512/- (2,466 x 12 x 11). Apart from the loss of earnings, the claimants are entitled for an amount of Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of estate and two kids who are student at abroad lost their parents including the mother care even taken Rs.10,000/- each towards care and guidance vide **Rajesh v. Rajbir Singh**[5]. In all the claimants are entitled for an amount of Rs.3,80,512/-(Rs.3,25,512/- + Rs.55,000/-) as just compensation, reduced from Rs.5,08,000/-.

07. Accordingly and in the result, the appeal is partly allowed

reducing the compensation from Rs.5,08,000/- to Rs.3,80,512/-. In other respects, the award of the Tribunal holds good. No costs.

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

Dr. B. SIVA SANKARA RAO, J

10.02.2016
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[1] (2015) 9 SCC 273
[2] 2013 ACJ 2141
[3] AIR 2001 (SC) 3218
[4] 2009 ACJ 1298
[5] 2013 ACJ 1403