HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.658 of 2010

JUDGMENT:

The respondent-Andhra Pradesh State Road Transport Corporation (for short 'APSRTC'), impugning the award of the tribunal dated 24.04.2009 in MVOP No.152 of 2007 in fixing 80% contribution of the APSRTC driver by fixing 20% self negligence of the deceased-V.Subba Rao, aged about 52 years as on the date of accident as per Ex.A5-Post Mortem Certificate, for the accidental death on 11.02.2007, in the claim maintained under Section 166 of the Motor Vehicles Act (for short 'the Act') for a compensation of Rs.4,00,000/- since arrived Rs.3,67,600/- with interest at 9% p.a., impugning the same, present appeal is maintained with the contentions in the grounds of appeal that the tribunal ought to have considered that there is a total negligence of the deceased, who was proceeding along with his son as pillion rider to the bike bearing No.AP 27J 3521 and there is no fault of the driver of the bus bearing No.AP 10Z 8546 as also deposed by RW.1 and fixing of 20% contribution only on the deceased and 80% on the APSRTC is unsustainable apart from quantum and rate of interest to reduce.

2. Learned Standing Counsel for the APSRTC reiterated the same.

3. Whereas, it is the submission 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.

4. Heard and perused the material on record.

5. As per Ex.A5-Post Mortem Certificate, the age of the deceased was 52 years. In the claim under Section 166 of the Act, the multiplier applicable as per Sarla Verma v. Delhi Transport Corporation[1] is '11'. The tribunal from the evidence on record rightly arrived 20% contribution of the son of the deceased while riding the bike and there is nothing to interfere insofar as that aspect is concerned for this Court while sitting in appeal including from appreciation of the evidence of RW.1-driver and PWs.1 and 2, who are the rider of the bike and eye witness to the accident with reference to Ex.A1-FIR, Ex.A6-Charge sheet, Ex.A5-Post Mortem Certificate, Ex.A4-M.V.I.Report and Ex.A7-Rough sketch.

6. Now coming to the quantum of compensation, there is no proof regarding the earnings of the deceased of doing of any commission business, the tribunal taken the earnings at Rs.4,500/- p.m. by estimation, in fact there is no basis. As per the expression of the Apex Court in Lata Wadhwa v. State of Bihar[2], in the absence of proof of earnings, minimum Rs.3,000/- to be taken and if taken with proportionate increase to the date of accident Rs.3,600/- is just to assess the earnings of the deceased. If such is the case, out of 8 claimants except the wife, all are major sons and married daughter no way dependents, thereby, 1/3rd is deducted towards personal expenses, it comes to Rs.2,400/- p.m. and Rs.28,800/- p.a. and the same is multiplied with the multiplier

[1] 2009 ACJ 1298
[2] AIR 2001 (SC) 3218

11, it comes to Rs.3,16,800/-. Apart from the same, the claimants are also entitled to Rs.50,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of estate, in total compensation comes to Rs.4,01,800/- and 80% liability therein comes to Rs.3,21,400/- rounded to Rs.3,22,000/- and what the tribunal awarded of Rs.3,67,600/- has to be reduced.

7. Accordingly, the appeal is partly allowed by reducing compensation from Rs.3,67,600/- to Rs.3,22,000/-. Rest of the terms of the award of the Tribunal holds good. There is no order as to costs.

8. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date:13.12.2016
pab