HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.Nos.3154 OF 2011 and 505 OF 2013

COMMON JUDGMENT:

The claimants 5 in number, no other than wife, two minor children and parents of the deceased by name Mallesham aged about 34 years as per Exs.A.4 post mortem report filed O.P.No.1807 of 2004 under Section 166 of the Motor Vehicle Act,1988 *(for short, 'the Act')* on the file of the learned Chairman of the Motor Accidents Claims Tribunal–cum-III Addl. Chief Judge, City Civil Court, Hyderabad (*for short, 'Tribunal')*, for a claim of Rs.12,00,000/- against the owner and Insurer of the auto bearing No. AP 23T 6169 and APSRTC-hiree of the bus bearing No.AP 11 Z 2345 from both the vehicles involved in the accident, with the averments that the deceased, on the fateful day on 07.05.2004, was traveling in the auto of 1st respondent insured with the 2nd respondent supra under Ex.B.1 policy, the bus of respondents 3 and 4 while coming in opposite direction, there was collusion due to contributory negligence of both the drivers which resulted death of said Mallesham and thereby entitled to compensation saying the deceased was doing grocery business and running general stores at KPHB colony and earning Rs.10,000/- per month and he was aged about 25 years as on the date of accident. The contest before the tribunal by R.2-Insurer of the auto as well as APSRTC respectively is, while saying no negligence on the respective part, attributing negligence on the part of driver of auto and in other respects saying the claim is excessive and untenable and liable to be dismissed against them respectively. It is from said contentions and from the evidence of 1st claimant as P.W.1 and so called witness P.W.2 with reference to Exs.A.1 to A.5 and employee of the Insurer R.W.1 and driver of RTC R.W.2 and from Ex.B.1 policy and X.1 photo with negatives, the tribunal by its award dated 11.01.2007 granted compensation of Rs.4,35,000/- with interest at 7.5%p.a. by fixing liability against respondents 1 and 2 (owner and insurer of the auto)only. Impugning the said award, the claimants preferred the appeal MACMA No.3154 of 2011 with the contentions in the grounds of appeal that the tribunal ought to have considered the income tax returns of the deceased showing Rs.57,900/- p.a.as income of the deceased and should have applied multiplier 17, that the tribunal failed to award compensation under the heads of transport charges, loss of future earnings and dependency, hence to grant compensation as prayed for.

2. On the other hand, 2nd respondent-Insurer of the claim petition, preferred the appeal MACMA No.505 of 2013 contending that the tribunal erred in fixing liability against the auto owner and Insurer instead fixing contributory negligence of other vehicle APSRTC bus and the multiplier 17 adopted is wrong so also the multiplicand arrived and the compensation awarded is excessive and untenable and thereby allow the appeal modifying the award reducing the quantum and fixing contribution against the driver of the APSRTC (respondents 3 and 4).

3. The respective appellants reiterated the contentions and the APSRTC on the other hand as respective respondent to the two appeals supported the award exonerating the RTC.

4. Heard both sides and perused the material on record for common disposal of both the appeals in the factual matrix supra.

5. The FIR Ex.A.1 discloses that while the auto driver was overtaking another vehicle, hit the right front portion of the RTC bus. Ex.X.1 photo also is showing right side bumper in front portion of the bus is damaged. The police filed Ex.A.2 chargesheet after investigation against the auto driver. The auto driver did not come to witness box but

the bus driver as R.W.2, also deposed in support of the above that the auto driver while trying to overtake Hero Honda motor cycle and the lorry ahead of the motor cycle while coming in high speed with one person sitting by the side of the auto driver, in that overtaking process in wrong side, all of a sudden went panic on seeing their bus coming in opposite direction, applied sudden brakes from which the auto turned turtle and rolled down to a distance towards extreme right side of the road and the bus stopped for no fault of bus driver. The accident resulted in the above manner and in the cross-examination it is disclosed of road width about 40feet and the bus was proceeded towards Balanagar in opposite direction to the auto. That it is the contest in the course of hearing the appeals, by the Insurer saying the RTC also liable for contribution by finding fault that the evidence of bus driver R.W.2 with reference to FIR Ex.A.1 and chargesheet Ex.A.2 which show the auto with capacity of 3+1. Even therefrom there is no any false version as what R.W.2 deposed is besides another person was allowed by its driver to sit and the others if any are in the rear seat, thus It makes no difference to interfere with the finding of the tribunal therefrom but for to say from Ex.A.3 rough sketch, there are skid marks and the same is also reflected in the Ex.A.2 chargesheet and Ex.A.1 FIR shows the version of R.W.2 that the auto dashed the bus and the accident occurred because of the RTC bus was also coming with speed. Though the bus driver rightly proceeded in right direction with speed cannot be found fault, the skid marks on the road gives some weight to consider any contribution or not therefrom when the evidence on record shows the auto came in wrong direction and dashed and the bus in right direction while proceeding could be controlled by applying sudden brakes naturally result in skid marks on the road and the same will not fix the fate of the APSRTC for liability from mere pointing out in the absence of any evidence to corroborate with factum also.

6. It is therefrom the tribunal came to the conclusion of the accident was the result of sheer negligence of auto driver for no fault of bus driver. Once that is the right conclusion arrived by the tribunal, there is nothing to interfere for this Court while sitting in appeal much less to say any contribution on the part of bus driver to make RTC also liable for any contribution or for apportionment of compensation to shoulders of RTC. Undisputedly the Ex.B.1 policy covers the risk including from the evidence of R.W.1 employee of the Insurer of the auto to say that the auto driver has no license there is nothing including from R.W.1 employee of the Insurer so also from the chargesheet and there is no record filed and rightly concluded by the tribunal in fixing liability on the Insurer to indemnify. The age of the petitioner from very claim petition shows 35 years to take the same into consideration.

7. Coming to the quantum, the accident was dated 07.05.2004. Ex.A.5 is only challan not even income tax returns and the same shows paid on 16.06.2004 by mentioning date as if 31.03.2003. In fact it is pendenti-liti document with no sanctity. There is no record filed as rightly concluded by the tribunal including of any accounts of day book or ledger or sale tax returns if at all he was doing any grocery or provisions business much less earnings therefrom Rs.10,000/- per month to substantiate. The Ex.A.5 shows the only Rs.170/- paid into the bank by the deceased towards tax and does not show what is the total tax payable to give any credence to it as pointed out by the tribunal. The tribunal therefrom taken Rs.3,000/- per month by estimated the earnings of the deceased. The claim is under Section 166 of the M.V.Act. As per the expression of the Apex Court in Latha Wadhwa vs. State of

Bihar[1], a minimum of Rs.3,000/- to be taken and by the date of accident, the earnings of the deceased can be estimated at Rs.3,300/- per month with prospective increase and the claimants since 5 in number all dependents, 1/4th to be deducted towards personal expenses, then it comes to Rs.2475/-. The multiplier applicable is 16 upto 35 years but not 17, then it comes to Rs.2475/- x 12 x 16= Rs.4,75,200/- besides Rs.50,000/- towards loss of consortium to the 1st claimant, Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of estate, Rs.20,000/- towards care and guidance of two minor children is awarded it comes to Rs.5,80,200/- which is the just compensation the claimants are entitled.

8. In the result, the appeal MACMA No.3154 of 2011 filed by the claimants is partly allowed by enhancing the compensation from Rs.4,35,000/- awarded by the tribunal to Rs.5,80,200/- by confirming the rate of interest. Rest of the award of the tribunal holds good. The appeal filed by the Insurer MACMA No.505 of 2013 is dismissed. There is no order as to costs in the both the appeals. Pending miscellaneous petitions, if any, in these two appeals shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:26.12.2016

Vvr

[1] (2001) 8 SCC 197=AIR 2001 (SC) 3218