

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO
MACMA Nos.370 and 931 of 2010

COMMON JUDGMENT:

The respondent-APSRTC of claim petition M.V.O.P.No.1711 of 2007 and the claimants(Legal representatives of the deceased by name P.Parashuramulu), of the said claim petition on the file of the Chairman, Motor Accidents Claims Tribunal–cum-IV Addl. District Judge, (Fast Track Court), Warangal district (for short, 'the Tribunal') for the claim maintained under Section 166 of the Motor Vehicle Act,1988 (*for short, 'the Act'*) maintained the two appeals (MACMA No.370 of 2010 by APSRTC and 931 of 2010 by the claimants) respectively impugning the award dated 05.09.2009. The contention of the claimants is that the compensation granted by the tribunal is utterly low, that the tribunal should have considered the earnings of the deceased more than Rs.5,000/- p.m. and went wrong in fixing Rs.2,500/- p.m. and should have deducted 1/4th towards personal expenses instead of 1/3 and thereby to allow the claim as prayed for.

2. The contention of the APSRTC is that the tribunal gravely erred in holding the accident was the result of rash and negligent driving of the bus driver and also ignoring the contribution by the deceased in the accident instead of fixing contributory negligence with proportionate liability if at all for the deceased was boarding the running bus responsible for his fall and ran over and the multiplier adopted of 16 is also not correct and the annual income of the deceased estimated Rs.30,000/- p.m. also not correct, hence, liable to be dismissed.

3. Heard and perused the material on record in both the appeals.

4. So far as the accident was result of rash and negligent driving of the bus driver and there is any contribution of deceased concerned, as per the claim petition averments, the deceased while boarding the bus, Conductor informed of the same was Express Bus and there was no

stop at Nidigonda village and while deceased was getting down, the driver moved the bus rashly and negligently from which he fell down and rear wheel of the bus ran over him and died at the spot. The manner of accident was not in dispute. Even taken for arguments sake, the deceased was getting down from the moving bus before it is stopped and was ran over, for which there is no negligence mainly on the part of the bus driver but on the Conductor as he failed to give signal to the driver to stop the bus as he told there was no stop at Nidigonda village, and it is after fall, the deceased was succumbed from the running over him the back wheel of the bus though the driver could have been afforded with finder of lost opportunity. Here, the contribution of the deceased therefrom can be taken even from the claim 10% only, for the remaining 90% on the driver of the crime vehicle instead of fixing total liability on the APSRTC bus as the tribunal did.

5. Coming to the quantum of compensation, the post mortem report shows the deceased was aged about 37 years and for a persons between 36 to 40 as per **Sarla Verma v. Delhi Transport Corporation**^[1], the multiplier applicable is 15 and not 16 taken by the tribunal by adopting schedule II of table of the Act that applies only to claim under Section 163-A of M.V.Act.

6. Coming to the earnings of the deceased, it is the claim that the deceased was owning 18 acres of land and a toddy topper and also earning of Rs.5,000/-p.m. from cultivation and toddy topping. There is Ex.A.6 pahani showing the land of about 8 acres is rainfed land and Ex.A.7 Identity card of the deceased shows he was a member of Toddy Toppers Association. So far as the agricultural land concerned, what is lost is only supervisory in the event from the land remained and succeeded by the claimants and even taken as toddy topper, it is only for topping but there is nothing to show he was having

any toddy toppe licence for topping toddy and sale and earnings therefrom. The tribunal no doubt therefrom taken earnings at Rs.30,000/- p.m. The claimants before the tribunal from the evidence is it could have been taken at least Rs.4,500/- p.m. the earnings. As per the expression of the Apex Court in **Latha Wadhwa vs. State of Bihar**^[2], in the absence of proof of earnings, Rs.3,000/- to be taken and the accident was dated 09.09.2007 about 6 years after the expression supra and even taken the earnings at Rs.3,700/- p.m. there are 6 claimants and if 1/4th deducted towards personal expenses of the deceased, it comes to Rs.2,775/- x 12 x 15 = Rs.4,99,500/- besides loss of consortium of Rs.1,00,000/-, funeral expenses of Rs.25,000/-, RS.10,000/- towards loss of estate and Rs.40,000/-towards care and guidance of four minor children totaling to Rs.6,74,500/- and 90% therein comes to Rs.6,07,050/- which is just compensation to which the claimants are entitled.

7. In the result, both the appeals are allowed in part by allowing the MACMA No.370 of 2010 filed by APSRTC by fixing 90% contribution by the APSRTC and remaining 10% on the part of the deceased and the MACMA No.931 of 2010 by enhancing the compensation of Rs.3,27,000/- to Rs.6,74,500/- and 90% therein of Rs.6,07,050/- is liable by the APSRTC. The APSRTC is directed to deposit the amount within one month from today. On deposit or execution and recovery, the claimants are permitted to withdraw the same. There is no order as to costs in the appeals. Consequently, miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:22.01.2016

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^[1] 2009 ACJ 1298

^[2] (2001) 8 SCC 197=AIR 2001 (SC) 3218