

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. Nos.364 and 1020 of 2010

COMMON ORDER:

The appellant in M.A.C.M.A. No.364 of 2010 is the claimant and the appellant in M.A.C.M.A. No.1020 of 2010 is the 2nd respondent—insurer among the two respondents including the owner of the lorry bearing No.ANN 6579, who remained exparte in O.P. No.159 of 2002, maintained by sole claimant supra on the file of the Motor Accidents Claims Tribunal–cum-District Judge, Guntur (for short ‘the Tribunal’) under Section 166 of Motor Vehicles Act (for short ‘the Act’) claiming compensation of Rs.20,00,000/- for the death of her brother—Gangaraju Venkata Sudheer, aged 22 years, in the motor accident dated 29.11.2000 from the contest, the Tribunal granted Rs.8,75,000/- with interest at 7% per annum. The contest of insurer before the Tribunal is that the sheer negligence of the Maruthi car driver i.e., the deceased, the accident occurred for no fault of lorry driver and the lorry driver has no valid driving license.

2) The Tribunal from the evidence on record held that on 29.11.2000 six persons were travelling in the Maruthi car bearing No.AP 7 3173 which was driven by deceased person by name Gangaraju Venkata Sudheer, aged about 22 years, unmarried and the other five persons travelling include the claimant’s married sister Dr.Sowmini, her injured husband Dr Radha Krishna (informant to the police in registering the crime No.118 of 2000 as Ex.A1 against the 1st respondent—lorry driver) her mother, her junior maternal aunt and her daughter. There was a head on collision between the vehicles that resulted the accident at Multaguntapadu on N.H5, near to Ongole at the eve hours at about 2.30 am (after midnight). No doubt, the police after

investigation filed charge sheet against the lorry driver having shown abated from death of deceased co-accused car driver and again in saying the death of car driver was due to the shock and haemorrhage from the injuries in the accident, outcome of his rash and negligent driving in filing the final report. However, the observations of the Tribunal are that PW.1—sister of the deceased, who is also one of the persons travelling in the car, besides the informant—her husband and once, she deposes coming into the witness box saying that the accident was from lorry drivers' negligence that is the criteria irrespective of the police investigation covered by Ex.A5—charge sheet speaks otherwise and also the Ex.A4—MVI report, if any in coming to the conclusion of total negligence is on the part of the lorry driver for no rebuttal evidence from the side of the lorry driver and thus the version of PW.1—eye witness cannot be brushed aside lightly and it shows had the lorry driver exercised due care in driving the lorry, he would have averted the hitting the maruthi car coming in opposite direction.

3) This is one of the issues raised in both the appeals, for the claimant in her appeal supporting the same and for the insurer in the appeal disputing the same, for this Court to decide.

4) Heard both sides in both the appeals for common disposal at length and perused the material on record.

5) One of the submissions made by the learned counsel for claimant in support of the award of the Tribunal is that out of the six claims i.e., O.P. Nos.157, 158, 159, 205, 863 and 844 of 2002 filed by the married sister of deceased for the death of Gangaraju Venkata Sudheer and their mother, apart from her claim for the injuries and the respective three injured were no other than her aunt, her daughter and her husband and all the injury claims including death claim of the

mother were settled in lok adalat. No doubt, it is though one of the relevant considerations, as rightly pointed out by the counsel for the insurer that the Lok Adalat awards say only a quantum is arrived for settlement and without going into at whose fault or with what percentage of contribution of both vehicle drivers, if any specifically, same is of no help. Thus, that cannot be taken as basis to decide in either way.

6) However, from the facts of the case on hand, what remains to say is that the claimant having relied upon and even not disputed the correctness of Ex.A4 and A5 besides Ex.A1 much less any way explained though all these show the contribution of the deceased to the accident and particularly from the police referred report in pointing out that it is a case of head on collision of both the vehicles in the early hours on the national high way. Once the charge sheet filed and relied upon as part of the evidence of the claimant in the PW.1's evidence by unexplained observations against deceased as contributed to the accident that cannot be ignored so also the MVI report. The expression of the Apex Court in *NIC vs Rattani* supports the conclusion. Thus, the Tribunal did not consider the same and went wrong in observing that if the lorry driver taken the precaution, he could have averted the accident.

7) The expression of the Apex Court in ***Municipal Corporation of Greater Bombay vs Laxman Iyer***¹, lays down the distinction between negligence, sole negligence, contributory negligence and composite negligence. It was held therein that composite negligence includes the negligence on the part of the victim injured or deceased as the case may be also and the contributory negligence of the

¹ 2003 (8) SCC 731

deceased considered is from the claim apart from negligence to be contributed on other respondents. It is observed that the finder of last opportunity on the doctrine of last opportunity envisages that when parties are careless, the party which has the last opportunity of avoiding the result of the other's carelessness is alone liable. However, according to Lord Denning, it is not a principle of law, but a test of causation. Though in some decisions, the doctrine has been applied by Courts, after the decision of the House of Lords in the ***Volute² Swadling vs Cooper³***. Thus, the principle to be determined from the above is not mere finder of last opportunity, as concluded by the Tribunal even without considering the other side's carelessness is also liable. Here, once it is a head on collision, it is the carelessness of the drivers of both vehicles on its face apparent from Ex.A4—MVI report besides Ex.A5—final report mainly pointed out the driver of the car is solely responsible. However, in case of contributory negligence, finder of last opportunity and collusion between the two vehicles is not the sole criteria, as several factors relating to the manner of accident require to consider viz., width of the road, condition of the road and size of the vehicles and on which side of the vehicle lying at the time of accident and on which side damage to the respective opposite coming vehicles is caused from the MVI report, to decide who is totally in wrong side and who is in right side or equally at wrong and for that material, particularly, there is lack of scene observation report to decide. This Court is thereby unable to arrive exact conclusion but for from evidence to decide referring to that facts of the accident was at national high way the road condition is good with sufficient width even by the year 2000 for the Court to take judicial notice to arrive by some hypothesis to just conclusion. Thereby, size of the vehicle is relevant herein. In the

² (1922) 1 AC 129

³ 1931 ACJ 1 = 1930 All ER Rep 257

expression of the Apex Court in **Laxman Iyer** (supra), the accident was occurred due to head on collision and the Tribunal fixed 25% of negligence on scooterist and 75% of negligence on car driver by negating the contest of the insurer and claimants respectively contra.

8) Once such is the case, so far as the car and the lorry concerned, from head on collision, atleast it can be taken 1/3rd contribution by the car driver and 2/3rd by the lorry driver.

9) From this, now coming to the quantum of compensation, the counsel for the insurer by relying on the expression in **Laxman Iyer** (supra) stated for the deceased was unmarried and the claimants there were parents and taken at Rs.3,000/- by the Tribunal as monthly earnings of the deceased and the same was considered by the Apex Court by reducing the multiplier from 15 to 10. In that case, it was observed that it is not only the age of the parents but also the age of the deceased and loss of pecuniary damages, besides any contribution that is the criteria to consider. Therein, the deceased was aged about 18 years and student and prospective income earner. Here the deceased was about 22 years and he was final year MBBS student and even the insurer placed reliance on the Ex.A5—final report, though marked by the claimant that itself shows the factum that the claimant is the sister of the deceased.

10) The counsel for the claimant placed reliance on the Division Bench expression of this Court in **B.Ramulamma vs M/s.Venkatesh Bus Union, rep. by A.M.Velu Mudaliyar, Bangalore**⁴ where it was observed that the two deceased persons therein were B.E final year students and income of the deceased can be fixed at Rs.12,000/- per month and the contribution after deduction being the deceased were

⁴ 2009 (6) ALT 784 (DB)

bachelors for the dependent parents, half to be taken into consideration. Here, the deceased was MBBS final year student. Once such is the case, what the Tribunal taken the annual earnings of the deceased at Rs.50,000/- per annum as the estimated earning capacity of the deceased and half thereof to be taken for any contribution to the sole claimant-married sister.

11) From that analogy, apart from the fact that in **Laxman Iyer** (supra) the accident was occurred in the year 1989 and in the case on hand, the accident was occurred in November, 2000 and in **Ramulamma's case** (supra), the accident was occurred on 01.05.1995, even therefrom taking into consideration the prospective earning capacity of the deceased, it can be arrived his earnings at Rs.10,000/- per month and from the expression of the Apex Court in **Sarla Verma vs Delhi Transport Corporation**⁵ half towards personal expenses of the deceased can be deducted, out of it and from the recent full bench expression of this Court, reference was answered on 01.02.2016, which is reported in **Dr.Gangaraju Sowmini vs Alavala Sudhakar Reddy**⁶ holding in the absence of dependants, the non-dependent legal heirs are entitled to the claim under Section 166 of M.V Act. Once such is the case, 50% contribution to the claimant can be taken. If same is taken, no doubt, there are expressions saying the age of the deceased is relevant. Once it is the basic principle laid down in **Laxman Iyer** (supra) placed reliance apart from the three judge bench expression of the Apex Court clearly laid down the criteria of when the dependents are more aged than deceased, the Tribunal only consider their age, that too, here the claimant is the married sister and the contribution can extend only till his marriage, it is just in the facts of the case to

⁵ 2009 ACJ 1298

⁶ 2016 (2) ALD 226

consider from the age of the claimant—married sister of the deceased and then the multiplier applicable is '16' as per **Sarla Verma** (supra) and not 17 as taken by the Tribunal. Then it comes to Rs.9,60,000/- (Rs.10000 X 12 X 16 X ½). Apart from it, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of estate to include, in all it comes to Rs.9,95,000/-. Out of it, after deducting 1/3rd contribution of the deceased, it comes to Rs.6,63,333/- rounded to Rs.6,64,000/- is the just compensation.

12) Accordingly and in the result,

i) M.A.C.M.A. No.1020 of 2010 filed by the Insurance Company is partly allowed by reducing the compensation from Rs.8,75,000/- (Rupees eight lakhs seventy five thousand only) to Rs.6,64,000/- (Rupees six lakhs sixty four thousand only).

ii) M.A.C.M.A. No.364 of 2010 filed by the claimant is partly allowed by enhancing the rate of interest from 7% to 7.5% per annum from the date of claim petition till realisation, however while reducing the quantum to Rs.6,64,000/-.

iii) Consequently, miscellaneous petitions pending, if any in these appeals shall stand closed.

iv) No order as to costs in both appeals.

Dr. B.SIVA SANKARA RAO J,

Date:26.10.2016

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