HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.3044 of 2005
AND
Cross objections MP.No.1030 of 2016
IN/AND
Cross objections (SR).No.7519 of 2016

COMMON JUDGMENT:

The wife, 3 minor children and mother of deceased, Menuge Mahabub, shown aged 35 years as per Ex.A4-PM report and though Ex.A8-driving license of the deceased filed including Ex.A10-RC of the lorry, the relevant portion showing the age not filed for reasons better known by the claimants, though they are the persons having the best evidence in this regard and the claim is maintained against the owner and insurer of the lorry bearing No.AP-7-T-5112 under Section 166 Motor Vehicles Act, 1988, for a sum of Rs.20,00,000/- and the Tribunal after contest with reference to the evidence of PWs.1 to 3 with reference to Ex.A11-certificate and Ex.A12-statement showing hire of service with Rayalaseema Hi Strength Hypo Limited, Kurnool and getting income by deceased and Exs.A1 to A14 including the above and from RW.1 evidence with reference to Exs.B1 and B2 vide award dated 26.07.2005 granted compensation of Rs.13,10,000/- with interest @ 7.5% per annum fixing liability jointly and severally on the owner and insurer of the crime vehicle lorry supra.

It is impugning the same, the insurer maintained the present appeal and undisputedly within no time and served notice on respondent Nos.1 to 5 leaving respondent No.6/owner, who remained ex parte before the Tribunal without contest, no way even necessary party to the appeal vide decision in **M.Chakradhara Rao v. Y.Baburao**[1], they did not choose to file cross objections after appearance but for with the application referred supra to condone the delay of 3719 days to receive the cross objections by condoning such delay with contentions that the Tribunal ought to have considered and awarded the claim amount of Rs.20,00,000/- instead of granting

Rs.13,10,000/-.

The reason assigned for the delay is with no little substance, more particularly, even put forth appearance through advocate in the appeal in 2005 itself for filing the cross objections with delay condonation only in 2016 to condone the delay of 3719 days that to for cross objections no court fee particularly required, even any requirement of funds to secure apart from advocate already been engaged to guide them. Thus, there is not even a little justification from the whisper of averments to condone the delay much less reasonable or sufficient cause as contemplated by either order 41 Rule 3-A CPC or Section 5 of the Limitation Act. Hence, delay application to receive the cross objections, is dismissed and the cross objections are rejected.

Now coming to the core of the contention of the compensation awarded by the Tribunal is excessive and requires reduction or not concerned.

PW.3 is the eye-witness by name EVR Goud, who categorically deposed also sighted as LW.1 in setting the law in motion. He along with deceased was travelling with Sulphuric acid from Rayalaseema Hi Strength Hypo Limited, Kurnool to Thungabhadra Fertilizers, Hospet of Karnataka and at the crossing of the Peddapadu Village the accident occurred from the opposite crime vehicle of the 1st respondent dashed the vehicle driving by the deceased. Undisputedly, under Ex.A6-conviction judgment in C.C.No.470 of 2000 on the file of Judicial Magistrate of First Class, Kurnool, the driver of the lorry of the 1st respondent pleaded guilty by admitting the offence when questioned and was sentenced to undergo imprisonment. The police final report under Ex.A2 pursuant to Ex.A1-FIR and the conviction judgment under Ex.A6 with reference to PW.3 evidence, once establishes and there is nothing even to show for filing a seen observation report or any further evidence on the respondents side at least by examination of the driver to say what made him to admit the guilt and manner of accident, if any, the Tribunal has rightly came to the conclusion that the accident was the result of rash and negligent driving of the driver of crime vehicle of the 1st respondent undisputedly insured with the 2nd respondent. Once such is the case, there is nothing to interfere with the finding of the Tribunal that the accident was the result of the rash and negligent driving of the driver of the 1st respondent.

Now coming to the quantum of compensation awarded by the Tribunal is excessive or not concerned. Undisputedly, there are no income tax returns submitted. The basic rule in case of assessment of the earnings of the deceased concerned, if it is by the private employment or self-employment to estimate no doubt manner of work where there is some claim of running business agency of plying business as a transport entity, there must be specific license required and but for a certificate of Transport Department Ex.A9, there is no material much less a RC. There are no income tax returns submitted, but for really the evidence of PW.2, who issued Ex.A11 certificate saying the deceased was paying for the transport, huge amounts. Had there been any little truth a prudent person with a duty bound citizen, he must submit income tax returns. He never submitted income tax returns much less under Form-16, even a claim in tax deductions out of the alleged payments to get refund saying taxable limit with the ceiling. In the absence of which, it is difficult to presume the income as claimed. No doubt the Tribunal arrived at Rs.10,000/- per month with reference to Exs.A11 and A12. Even undisputedly thereform what the Tribunal committed a mistake is in considering the lorry transport agency is there, ownership of the lorry is there and running business is there, there is no claim that business was affected. If such is a case, the loss substantially is for a period to get earnings from the business. That is the one of the contentions raised by the learned counsel for the insurer. No doubt, it has been taken into consideration. Even though it is not the law of stable income at least for non-proper attendance, who was discontinued for monitoring the lorry business, requires experience for nothing to say but for getting income plying a lorry. No doubt the Tribunal taken into consideration Ex.A13 also shows TDS deductions. Even taken all these, once the income from the lorry business survives that to be taken into consideration, there is no deduction as was referred supra, Rs.9,000/- per month is just. Having regard to above, it is just to reduce to Rs.9,000/- from Rs.10,000/- arrived by the Tribunal and the personal expenses deduction arrived by the Tribunal is only 1/3rd instead of 1/4th as laid down in **Sarla Verma Vs. Delhi Transport Corporation**[2]. The multiplier even 15.5 from the PM report about 35 years and as per Sarla Verma's case (Supra 2) up to 35 years it is 16 and above 35 it is 15. Therefore, it comes to Rs.9,000/-x3/4x12=Rs.81,000/-x15.5=12,55,500/-. Loss of consortium Rs.1,00,000/- to the wife, funeral expenses Rs.25,000/-, loss of estate Rs.10,000/-, care and guidance to 3 minor children Rs.30,000/-. It comes to Rs.14,20,500/-, however to confine to Rs.13,10,000/- of the Tribunal award nothing to reduce.

Accordingly, the MACMA filed by the insurer is dismissed and the cross objections filed by the claimants is rejected. No costs.

Consequently, miscellaneous petitions, if any shall stand dismissed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 29.04.2016
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[1] 2001 (1) ALT 495 (DB)

[2] 2009 (6) SCC 121