

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

MACMA (SR) No.3996 OF 2011

JUDGMENT:

Aggrieved by the award dated 22.03.2010 in MVOP No.51 of 2005 passed by the Chairman, Motor Accidents Claims Tribunal, (for short, 'the Tribunal') Vizianagaram, the claimants maintained the appeal with the contentions in the grounds of appeal that the award of the Tribunal is low and to enhance.

02. The claimants no other than the wife and minor children of the deceased - N.Pothuraju, who died in the motor accident dated 07.10.2004, while he was traveling in an auto bearing No.AP 30 T 7123, when the auto reached near Konada road junction, the driver of the bus bearing No.AP 11 Z 3572, driving the said bus in a rash and negligent manner and dashed the auto, thereby the passengers of the auto sustained injuries and the deceased succumbed therefrom.

03. The appeal against respondents 1 and 2 is dismissed for default on 10.03.2015 no way fatal to the appeal.

04. Learned counsel for Respondent No.3 submits that the auto driver had fault while coming in extreme left side of road and dashed the bus.

05. The Tribunal gave finding that the accident occurred due to rash and negligent driving of the bus driver, including from the FIR and charge sheet against the bus driver and also from the evidence of P.W.2 as eye witness.

06. P.W.3 is the Secretary in Association for Rural Development and Action Research, Pusapatirega, Vizianagaram District. He deposed that the deceased was working in their organization and drawing an amount of Rs.4,380/- towards salary as per Ex.A.4 for giving training in various Villages in Vizianagaram District. The Tribunal did not believe the same and taken the earnings at Rs.18,000/- per annum towards contribution to the family members and from his age 35, arrived the compensation.

07. The age of the deceased, as per PME report, is about 35 years. The multiplier applicable for the persons aged between 36 and 40 is '15' and for the persons aged up to 35 years, it is '16', hence '15.5' is correct multiplier and the Tribunal adopted '17' multiplier wrongly. The earnings of the deceased even as per Ex.A.4 proved to be taken including the prospective earnings @ Rs.4,000/- per month and the claimants are wife and two minor children, out of the earnings of the deceased, 1/3rd to be deducted towards his personal expenses, therefrom it comes to Rs.4,96,062/- (Rs.2,667/- x 12 x 15.5) towards loss of earnings. Apart from the loss of earnings, the first claimant is entitled an amount of Rs.1,00,000/- towards loss of consortium, and the claimants are entitled an amount of Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss of estate and Rs.20,000/- towards care and guidance to two minor children, vide expression **Rajesh v. Rajbir Singh**^[1]. In all the claimants are entitled to an amount of Rs.6,51,062/- (Rs.4,96,062/- + Rs.1,55,000/-), including rate of interest enhancing from 6% to 7.5% per annum.

08. It is needless to say as per the latest three judges expression of the Apex Court in **Khenyel v. New India Assurance Company Limited & others**^[2] if at all there is also the fault of the auto driver, the finding of the Tribunal no way comes in the way of the RTC, who is liable to pay among the joint tort feautres and to recover any contribution by auto driver also separately, however cannot escape from liability as the claimants are entitled to proceed against any of the joint tort feasers.

09. Accordingly and in the result, subject to the observation of entitlement to claim against the driver, owner and insurer of the auto for contribution, if at all, entitled by separate proceeding, the appeal is allowed enhancing the compensation from Rs.3,16,000/- to Rs.6,51,062/- (Rupees six lakhs fifty one thousand and sixty two only) with interest at 6% per annum, however on the enhanced amount with

interest at 7.5% per annum, subject to condition of not entitled interest from the date of claim petition, but from today. No costs.

10. The appellants/ claimants are entitled to the compensation subject to deposit court fee over and above Rs.6,00,000/- under rule 475 of APMV Rules 1989, without which the award cannot be executed before the Tribunal.

11. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

09.02.2016
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[\[1\]](#) 2013 ACJ 1403

[\[2\]](#) (2015) 9 SCC 273