

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.950 of 2010

JUDGMENT:

The APSRTC is respondent No.2 to O.P.No.504 of 2008 maintained under Section 166 of Motor Vehicles Act by wife and 2 major children of the deceased Hanumantha Rao aged about 50 years as per Ex.A3 PM report, for a claim of Rs.8,00,000/- for his accident on 27.09.2008 injuries resulted death while under treatment on 30.09.2008, since awarded compensation of Rs.8,00,000/- with interest @ 9% per annum, held the accident was the result of the rash and negligent driving of the driver of the 2nd respondent APSRTC bus bearing No.AP-10-Z-8936, maintained the appeal.

The contentions in the grounds of appeal vis-à-vis oral submissions of the learned counsel for the appellant/APSRTC are that the Tribunal ought to have believed the evidence of the driver of the bus-RW.1, the Tribunal went wrong in considering the negligence on the part of the deceased riding the motorcycle bearing No.AP-21-F-5385 and that too the accident was occurred at the cross road near Addanki and while both vehicles are proceeding in opposite direction from head on collision, the Tribunal should have seen that there is no proof of earnings of the deceased, hence to fix contributory negligence and reduce the compensation so also the rate of interest. Whereas it the submission of the learned counsel for respondent Nos.1 to 3/claimants for 4th respondent remained exparte before the Tribunal endorsed as not necessary party to the appeal, that the

award of the Tribunal holds good and for this Court while sitting in appeal there is nothing to interfere.

Heard and perused the material on record.

Now coming to the manner of accident, as can be seen from the very claim petition averments on 27.09.2008 at about 02.30 PM the deceased was proceeding on his motorcycle to go to Adanki and near Kalavakuru cross road the bus of the 2nd respondent-APSRTC, driven by 1st respondent saying without blowing horn dashed the bike of the deceased, from which he fell down and was shifted to Government Hospital, Addanki and later while undergoing treatment in Private Hospital, Guntur, breathed last. Crime No.132/2008 of Addanki Police Station was registered for the offence under Section 304-A IPC against the bus driver-RW.1. The contest of the RTC before the Tribunal is deceased was totally at fault and having been confused in riding the bike caused the accident and having dashed against the bus. The Tribunal held that though RW.1 the driver of the bus deposed that deceased was at fault in riding the motorcycle, did not believe the evidence of RW.1 and there is only inspection of APSRTC bus with no damage and condition good and the bike is not subjected to inspection. Ex.A3 PM report shows there is punctured wound of 16 cm present on left tempora paciela area of scalp besides a contusion of left frontotemporal scalp and paciela occipital area and there are five to six holes formed of left temporal bone and are loosely replaced and there is horizontal placed fissured fracture of middle cranial fassa on base of skull, it shows the deceased meanwhile died of head injury. The evidence of RW.1, the bus driver is that on seeing the

bike rider proceeding in confusion he stopped the bus on the extreme left side of the road and meanwhile motorcyclist while proceeding in zig zag manner hit the left bumper, as a result of he fell down and sustained injuries. He did not report the accident to the police, had there been any little truth and he also admitted in the cross examination that police after investigation filed charge sheet and he is facing the accusation. Thus, once the Tribunal came to the conclusion of despite the evidence of RW.1-the bus driver is at fault from PM report, FIR and charge sheet vis-à-vis the evidence of PWs.1 and 2, for this Court there is nothing to brush aside the finding that if there is any other evidence the accident taken place at the cross road itself can be presumed that from the both vehicles proceeding in opposite direction to presume contribution of the deceased. In fact RW.1 deposed of the bumper of the bus hit by the deceased while proceeding not even shown any damage at bumper much less any bent as MVI report clearly shows there is no damage at all.

Now coming to the quantum of compensation, as it is RTC appeal, the claimants only can support while attacking any finding the said quantum and not entitled to more than that as per the settled law and also from the combined reading of the provisions of the Act, 1988 with Order XLI Rule 22 read with Rule 24 CPC and also laid down by the Apex Court in **Ranjana Prakash Vs. Divisional Manager¹**.

Now coming to the rate of interest, the interest itself awarded by the Tribunal is excessive as can be seen from the settled

¹ 2011(8) Scale 240

expressions in **TN State Corporation Limited Vs. S.Rajapriya**² and **Rajesh Vs. Rajbir Singh**³. Coming to the quantum of compensation, the Tribunal taken Rs.6,000/- per month without any basis. So far as the agricultural income concerned, the properties are succeeded by the claimants including any partnership business of stone crushing but for any loss is supervisory loss. Thus Exs.A16 to A14 even taken together in relying to the stone crushing business and agricultural income, no doubt agricultural income concerned as laid down in **Sarla Verma v Delhi Transport Corporation**⁴ reiterated **Rajesh** supra even self employed and business people are eligible for prospective increase in earnings in the absence of proof even taken by the time of accident on 29.07.2008 from **Latha Wadhwa vs. State of Bihar**⁵ at Rs.4,000/- per month with 15% increase as per **Sarla Verma supra** thereon and from annual income arrived and 1/3rd deducted therefrom and multiplied by '13' multiplier from the age of 50 years and added to it Rs.50,000/- towards loss of consortium to the wife of the deceased, Rs.10,000/- loss of estate and Rs.25,000/- funeral expenses and what the Tribunal awarded of Rs.8,00,000/- no way required to be reduced.

Accordingly and in the result, the appeal is partly allowed by confirming the quantum awarded by the Tribunal, reduced the rate of interest from 9% to 7.5% per annum. In other aspects, the award of the Tribunal holds good.

² 2005(6) SCC 236.

³ 2013 ACJ 1403

⁴ 2009 ACJ 1298.

⁵ (2001) 8 SCC 197=AIR 2001 (SC) 3218

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 06.12.2016
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