HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.Nos.275 of 2010 and 666 of 2011

COMMON JUDGMENT:

The respondent/Andhra Pradesh State Road Transport Corporation (for short 'APSRTC'), aggrieved by the award of the tribunal dated 11.02.2008 in O.P.No.425 of 2007 maintained the claim under Section 163-A of the Motor vehicles Act (for short 'the Act') by the wife, major son, major unmarried daughter and mother of the deceased for a compensation Rs.4,00,000/-, for the accident dated 27.05.2007, since awarded Rs.2,70,000/- with interest at 7.5% p.a., by impugning the same maintained appeal in MACMA No.275 of 2010 and MACMA No.666 of 2011 is maintained by the claimants for enhancement of compensation.

2. On 27.05.2007, when the deceased was proceeding on his motor cycle from Krishnapuram to Anantapur, the APSRTC bus bearing No.AP 11Z 4372 dashed his motor cycle, as a result, he was succumbed to the injuries. As per Sarla Verma v. Delhi Transport Corporation[1], paras 32 and 33, it is observed that where dependants are more than 3, 1/4th has to be deducted towards personal expenses and upto 3, it is 1/3rd.

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[1] 2009 ACJ 1298

The claimants are wife, major son(not dependant), major unmarried daughter and mother of the deceased, maintained the claim under Section 166 of the Act, as per Schedule-II of the Act, 1/3rd has to be deducted towards personal expenses.

3. Coming to the earnings of the deceased, it was claimed that the deceased as a business man was earning Rs.8,000/- p.m. for which no basis that too in the cross examination when his avocation was in dispute and no scrap of paper filed but for the self-serving testimony of the wife of the deceased and relying on Ex.A1-F.I.R., Ex.A2-inquest, Ex.A3-Post Mortem Report and Ex.A4-charge sheet. Thus, the tribunal rightly not considered the deceased either as a business man or as a cultivator or anything can be of estimation from the say, however, taken Rs.2,550/- p.m. As per Lata Wadhwa v. State of Bihar[2], in the absence of proof of earnings, minimum Rs.3,000/- to be taken and as the accident was in 2007 after six years of the expression, the earnings of the deceased can be taken at Rs.3,500/- p.m . If 1/3rd is deducted towards personal expenses of the deceased, it comes to Rs.2,333/- p.m. and Rs.27,996/- p.a. and the same is multiplied with the multiplier '13' (applicable from the age of the deceased) it comes to Rs.3,63,948/-, besides Rs.9,500/- towards loss of

[2] AIR 2001 (SC) 3218

consortium, loss of estate and funeral expenses. Thus, Rs.3,73,500/- is the just compensation to award.

4. Coming to the contribution of the deceased, there is neither worth cross examination much less disputing the charge sheet and Post Mortem Report crush injuries nor evidence of even driver of the bus thereby, once the tribunal rightly held sheer negligence of the bus driver, there is nothing to say deceased contributed to the accident.

5. Accordingly and in the result, MACMA No.275 of 2010 is dismissed and MACMA No.666 of 2011 is partly allowed by enhancing compensation from Rs.2,70,000/- to Rs.3,73,500/- with interest at 7.5% p.a. from the date of petition till realization. In other respects, the award of the tribunal holds good. There is no order as to costs.

6. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date:26.10.2016
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