

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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Civil Miscellaneous Appeal Nos.3431 of 2003 and 2651 of 2004

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JUDGMENT:

These appeals arise out of the same claim petition in O.P.No.460 of 1997 on the file of Motor Accident Claims Tribunal-cum-District Judge, Anantapur, maintained by the parents of the deceased by name, B.Satish, aged about 24 years, a student of engineering course in Bellory, as can be seen from Ex.A6-marks memo, in the claim maintained under Section 166 of the Motor Vehicles Act for Rs.2,20,000/- against three respondents i.e., APSRTC i.e., the owner of opposite coming bus bearing No.AP 9Z 994, owner and insurer of Tata Sumo bearing No.AP 21 D 45, from the collision of two vehicles and the claim is maintained mainly saying the RTC bus was at fault and evidence of PW.1, no other than father of the deceased was to that effect not an eye witness and PW.2 so called patient under him because PW.1 is a doctor could not say anything, as can be seen from his evidence rightly held by the tribunal with no credibility to rely and ultimately tribunal came to the conclusion from F.I.R. and charge sheet against the driver of Tata Sumo in which the deceased was travelling, of rash and negligent driving by relying mainly the evidence of the bus driver, RW.1-S.Rangaiah.

2. It is impugning the same, the insurance company maintained the appeal in CMA No.2651 of 2004 in fixing

entire liability on the insurance company of Tata Sumo as if at fault despite evidence on record shows head on collision and composite negligence or contribution by driver of the bus also in saying there is improper appreciation of evidence and requires interference to set aside the finding at least to pass order for equal distribution of the composite/contributory negligence for both the vehicles.

3. Whereas, it is the contention of the appellants/claimants in CMA No.3431 of 2003 that the quantum awarded is utterly low, that the tribunal gravely erred in not considering the earning capacity of the deceased as a student of engineering, who lost breath in the accident on 11.07.1997 and hence prayed to enhance the compensation.

4. Heard and perused the material on record.

5. It is needful to mention in this context that out of several claims, some of the appeals are maintained either by the insurance company or by the claimants mostly ended in dismissal confirming the finding of the tribunal as the main negligence on the part of the Tata Sumo more particularly with reference to MACMA No.1242 of 2005 against O.P.No.380 of 1999 latest judgment dated 29.04.2014, where this Court observed that after the evidence on record and findings of the judgments, driver of Tata Sumo was held liable for rash and negligent driving from which the accident occurred thereby chosen not to interfere.

6. No doubt, the findings inter se parties are binding but

not third parties because it is not a judgment in rem either under Section 41 or 42 or 43 of the Evidence Act. Here, this judgment is not a judgment in rem but in the facts of the case connected with the same accident which has its own relevancy for appreciation with reference to the factual matrix on hand in the case covered by the two appeals.

7. The evidence on record categorically shows Tata Sumo was totally crushed and six persons travelling in it breath lost and bus ramed on the Tata Sumo. It is not as if RW.1 driver deposed that only left side of the bus alone damaged much less not a case of right portion of Tata Sumo damaged and both vehicles are proceedings in opposite direction. No doubt, RW.1-bus driver also might have sustained injuries out of few persons in the bus including conductor with two or more passengers at the time of accident. Once factual matrix clearly shows that it is the composite negligence of both drivers, the judgment in MACMA No.1242 of 2005 against O.P.No.380 of 1999 latest judgment dated 29.04.2014 of non-interference with the finding of the tribunal cannot be held binding on this Court much less to ignore this vital factual aspect involved as referred supra. Once such is the case, what is the contribution of the RTC also to the accident is the question. The latest three Judge Bench expression of the Apex Court in **KHENYEI v. New India Assurance Company Limited**^[1] clearly holds that the tribunal need not define the interse apportionment liability of the joint tortfeasors of two vehicles

involved, for the claim is otherwise can be maintained by impleading of some of them is enough to fix compensation and thereafter it is for them to proceed against the others. Once such is the case, remedy is left open to the insurer by filing application before the tribunal in O.P.NO.460 of 1997 to fix the contribution of RTC also to share the liability along with insurer for reimbursement. Nothing more is required further for the purpose of appeal in this regard of contributory or composite negligence of bus driver also concerned.

8. Coming to the quantum of compensation impugned in the CMA 3431 of 2003 of utterly low concerned, the award of the tribunal no way speaks what was the merit of the deceased boy and which year of engineering he was pursuing as on the date of accident i.e., 11.07.1997. Ex.A6 is the only document in this regard placed reliance by the claimants. The marks list of engineering-Ex.A6, the first semester marks list shows he was above average student and even second and third semesters marks lists also show the same. So the deceased completed three semesters by July, 1994. The tribunal did not adopt multiplier method and only awarded lumpsum amount without assessing the earnings at its estimation by guess work, as per the settled law. No doubt, the accident is way back on 11.07.1997, even taken the prospective earnings of the deceased since student appears to be of second or third year having completed three semesters from Ex.A6 referred supra as

above average candidate, atleast Rs.3,600/- p.m. can be considered as his earnings. Accordingly, the annual earnings of the deceased comes to Rs.43,200/- p.a. If half is deducted towards personal expenses it comes to Rs.21,600/- p.a. and the multiplier applicable from the age of parents is '13'. If the same is calculated it comes to Rs.2,80,800/-. Apart from the same, the claimants are entitled to Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of estate. Thus in total it comes to Rs.3,15,800/-. The rate of interest awarded by the tribunal at 9% p.a. is reduced to 7.5% p.a. as per **TN Transport Corporation v. Raja Priya**^[2] and **Rajesh Vs. Ranbir Singh**^[3].

9. Though the claimants claimed Rs.2,20,000/- as compensation, as per the expression of the Apex Court in **Rajesh** (supra), the claimants are entitled to just compensation of Rs.3,15,800/- subject to payment of deficit Court fee under Rule 475 of Andhra Pradesh Motor Vehicle Rules.

10. Accordingly and in the result, CMA No.3431 of 2003 is allowed by enhancing compensation from Rs.2,00,000/- to Rs.3,15,800/- with interest @ 7.5% p.a. from the date of claim petition till realisation. The claimants are not entitled to execute the decree, without payment of deficit court fee.

11. CMA No.2651 of 2004 is partly allowed by left open to the insurer to file an application in O.P.No.460 of 1997

requiring the tribunal to fix composite negligence of the bus driver of APSRTC and also to share the liability along with insurer for reimbursement. There is no order as to costs.

12. Miscellaneous petitions, pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:22-02-2016

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[\[1\]](#) 2015(9) SCC 273

[\[2\]](#) (2005) 6 SCC 236

[\[3\]](#) 2013 ACJ 1403