HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA.No.368 OF 2010

JUDGMENT :

The claim maintained by five claimants, no other than the wife, one major, one minor daughters and parents of the deceased P.Krishna Murthy aged about 42 years as per the service register entry showing date of birth as 05.03.1965 by the date of accident dated 25.11.2007, in the claim under Section 166 of the Motor Vehicles Act (for short ' the Act') for Rs.50,00,000/- in M.V.O.P.No.189 of 2008 against RTC from the alleged rash and negligent driving of the driver of the bus bearing No. AP 11Z 1196 that the bus dashed the Hero Honda bike of the deceased, from the contest by RTC that there is no fault of the bus driver, but the bike rider while overtaking the lorry suddenly swerved towards left side and hit left side bumper of the bus, fell down on the road sustaining fatal injuries and died, the Tribunal having held that the accident was occurred due to rash and negligent driving of the driver of the bus, disbelieving the evidence of RW.1-driver of the bus and awarded Rs.21,22,940/- with interest @ 6% per annum. Impugning the said quantum and also in fixing the liability on the RTC as unsustainable and excessive and sought to exonerate RTC from saying that the deceased died of his fault.

Respondents 1 to 5 claimants, even served with notice, failed to attend the Court. Respondent No.6-driver of the bus is not a necessary party to this appeal.

Heard. Perused the material available on record.

The fact that the bus and the bike of the deceased was proceeding in opposite direction at the time of accident is not in dispute. PW.1 claimed as eye witness says that the accident occurred due to fault of the bus driver, is not the informant of the accident from perusal of Exs.A.1 and A.2 and equally of PW.3. RW.1 is the driver of the bus says that the deceased while overtaking the lorry suddenly swerved to left side and hit left side bumper of the bus and fell down and that it is the negligence of the deceased, which resulted the accident. In fact, the charge sheet filed is against the bus driver, the bike of the deceased was not subjected to any examination as per Ex.A.5-MVI report. The statements of the witnesses recorded during investigation i.e. persons particularly of PW.2 or others no way relevant, but for cross examination, even exhibited by claimants thereby have no relevancy and evidentiary value. Once the vehicle is proceeding in opposite direction and the accident occurred both vehicles i.e. bike of the deceased and bus proceeding in opposite direction and there was collusion and scene of observation report not even filed, it is a just case to consider some contribution of the deceased also. If the same is taken to 20%, 80% liability out of the compensation can be considered that can be allowed and the Tribunal rightly taken multiplier '14' from the age of the deceased.

So far as the earnings are concerned, as per Ex.A.18-certificate issued by the Commercial Tax Officer, the deceased was a typist and his net salary was Rs.10,815/- and gross salary was Rs.13,445/-. Once such is the case, even he was not having permanent job from any contention of appellant i.e is not the criteria because even a salaried employee private also entitled apart from contract employee for prospective earnings as laid down in **Smt Sarala Varma and others v Delhi Transport Corporation and another**[1] particularly from paras 30 to 33 out of such salary even after permissible deduction with prospective increase of 30% what the Tribunal arrived of Rs.16,690/-. However, there is no income tax deduction even by the Tribunal out of the earnings same is taken into consideration of 10% out of it

[1] 2009 ACJ 1298 (SC)

comes to Rs.15,021/- and all the claimants are dependents, 1/4th to be deducted towards personal expenses, which comes to Rs.11,265/- x 12 x 14 =Rs.18,92,520/-, Rs.50,000/- towards consortium, Rs.25,000/- towards funeral expenses,Rs.10,000/- towards loss of estate and Rs.10,000/- towards, minor child. Thus, total compensation comes to Rs.19,87,520/-, which is rounded to Rs.19,88,000/- as the just compensation. There by, what the Tribunal awarded of Rs.21,22,940/- is required to be reduced to Rs.19,88,000/-, however, enhancing the rate of interest from 6% per annum to 7.5% per annum from today. In other aspects, the award of the Tribunal holds good.

Accordingly, the appeal is allowed in part as above. There is no order as to costs.

As a sequel, miscellaneous petitions pending, if any, in the appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

07.11.2016
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