

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.318 of 2010

JUDGMENT:

The respondents (RTC) to the claim petition maintained the present appeal impugning the award passed on 29.09.2009 in M.V.O.P. No.1868 of 2006 on the file of Motor Accidents Claims Tribunal-cum-Chief Judge, City Civil Courts, Hyderabad (for short 'the Tribunal'), which is maintained by wife, major son and unmarried mentally retarded daughter of the deceased by name Rama Chandra Murthy, aged about 51 years as per Ex.A7—S.S.C certificate and Ex.A3—post mortem report, maintained the claim under Section 166 of the Motor Vehicles Act, 1988 (for short 'M.V. Act') for a compensation of Rs.22,15,000/- for the accidental death of the deceased and from the contest by RTC, the Tribunal awarded Rs.21,79,800/- with interest at 9% per annum by fixing joint liability against respondents 1 and 2.

2) The contentions in the grounds of appeal vis-à-vis oral submissions made by the RTC are that the Tribunal gravely erred in not considering the negligence of the deceased, who was responsible for his death, in fixing entire liability on the RTC as if the driver the of the bus at fault, went wrong in placing reliance on Ex.A5—charge sheet instead of considering the other material on record, the earnings of the deceased taken by the Tribunal under Ex.A6—salary certificate is also erroneous, has adopted rational multiplier also unsustainable, so also the quantum of compensation and rate of interest awarded by the Tribunal is excessive and exorbitant, hence to reduce the compensation awarded by the Tribunal by fixing composite negligence on the deceased and prayed to allow the appeal.

3) Heard learned standing counsel for RTC and learned counsel for respondents/ claimants. Perused the material on record.

4) No doubt, a perusal of Ex.A3—post mortem report shows the cause of death was from the head injury. However, from perusal of Ex.A3—post mortem report there are as many as 11 external injuries including several fractures and it is not by mere fall from the bike but for from the bus dashed coming behind, the injuries could be sustained. Once such is the case, when the Tribunal came to the conclusion that the accident was the result of rash and negligent driving of the bus driver, from the evidence of PWs.1 to 3 of whom PW.2 is an eye witness to the accident and there is no oath examination against the bus driver, for this Court while sitting in appeal there is nothing to interfere on that finding including from perusal of Ex.A3, even there is a finder of last opportunity but for hitting by the bus these injuries does not arise.

5) Now coming to the quantum of compensation, as per Ex.A6—salary certificate the deceased was earning Rs.24,600/- and from the evidence of PW.3, the deceased was working as personal secretary to the Managing Director of Coromandel Fertilizers Limited from relating to date of death from the accident in May 2006 within the proximated period. The other evidence placed in support of the factum of proving the employment in Coromandal Fertilizers Limited as a confidential personal secretary to the Managing Director, not only the salary certificate of deceased but also letter of appointment, certificate of completion of graduation, certificates of technical education viz., type writing and shorthand and obtained appointment as steno-Clerk-1 in the year 1983. He obtained promotion in the year 1984 in that cadre and he passed type writing English higher and Telugu lower. Ex.A17—driving license also shows he is an employee. When these are substantiating and once such is the case, even from his age '51' years

from what is discussed supra, by relying on the expression of the Apex Court in **Sarla Verma vs Delhi Transport Corporation**¹ the prospective earning capacity 15% also increased as required to be taken into consideration. The multiplier applicable is '11' which is rightly taken by the Tribunal. For this Court while sitting in appeal against the impugned order there is nothing to interfere with regard to the quantum of compensation awarded by the Tribunal but for no cross objections to enhance the compensation.

4) Coming to the rate of interest, the Tribunal awarded at 9% per annum from the date of claim petition till the date of realization, which is highly excessive and exorbitant, reduced to 7.5% per annum from the date of appeal till the date of realisation as per the settled expressions of the Apex Court in **TN Transport Vs. Raja Priya**² and **Rajesh Vs. Rajbir Singh**³.

5) Accordingly and in the result, the appeal is partly allowed while upholding the finding of the Tribunal that the accident occurred due to rash and negligent driving of the bus driver and quantum of compensation. However, by reducing the rate of interest from 9% per annum to 7.5% per annum. In other respects the award of the Tribunal holds good. No order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Dt.27.10.2016
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¹ 2009 ACJ 1298

² 2005 (6) SCC 236

³ 2013 ACJ 1403