HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

MACMA.No.1768 OF 2012

JUDGMENT :

The claimants are parents, unmarried major sister and brother of the deceased Vetchala Pavan Kalyan. The sister and brother are not dependants on the deceased bachelor, thereby, only the parents are to be taken into consideration.

The claim was originally filed under Section 163-A of the Motor Vehicles Act (for short 'the Act') since amended as can be seen from the award under Section 166(1) of the Act.

As per **Sarala Varma v Delhi Transport Corporation and another**[1] 1/3rd to be deducted towards personal expenses of the deceased. The deceased was the second year B.Tech student. From perusal of the very report of the driver of the bus - RW1, no doubt the police from investigation filed charge sheet against him. The accident was taken place at Nalgonda Cross Roads. When the bus was stopped for passengers to get down and alight and while moving slowly, Tata Sumo driver came in front of the bus and stopped, and stated that one person fell under the back wheels and observed that the

[1] 2009 ACJ 1298 (SC)

deceased among the students boarding the bus slipped and fell down under the back wheels.

PW.1 and PW.2 are the witnesses examined on behalf of the claimants. PW.1 claimed as eye witness. The fact that the deceased fell under the back wheels of the bus and crushed not in dispute and also proved from the record, but for PW.1 is not eye witness. It indicates that the deceased also contributed to the accident and probabilises from the evidence of driver-informant of the accident of while boarding the bus the deceased slipped from the footboard and fell down. However, there is a **finder** of last opportunity though that principle has no strict application as laid down in **Municipal Corporation of Greater Bombay v Shri Laxman Iyer and another**[2]. Thus, even taken 25% contribution by the deceased, the RTC is liable for 75%. The claim is for Rs.10 lakhs. The Tribunal awarded Rs.10 lakhs as prayed for with interest @ 9% per annum. Now the same is impugned.

The Tribunal held as if the accident was the result of the bus driver in ignoring these facts in appreciation. Once there is a contribution of the deceased of 25% as arrived supra and RTC is liable for 75% from the

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[2] AIR 2003 SC 4182

evidence and facts and circumstances contending to the facts on record discussed supra.

Coming to the earnings of the deceased as 2nd year B.Tech student of the accident was dated 04.11.2008, what the Tribunal taken of Rs.12,000/- as excessive. No doubt Tribunal placed reliance on the Division Bench expression of this Court in **B.Ramulamma v M/s Venkatesh Bus Union and another**[3] and the expression in **N.Surender Rao and others v B.Swamy and another**[4]**.** In the above two cases, the deceased was 3rd year B.Tech student in computers. Here, in the case on hand, the deceased was B.Tech. 2nd year student. So far as **Ramulamma**'s case supra is concerned at para 51, it was discussed that though the accident was of the year 1996 as on the date of judgment dated 10.09.2009 prevailing salaries in so arrived and in **N.Surendra Rao and others** supra the accident was dated 29.03.2008 like in this case, thereby even for the difference between 3rd year student and 2nd year student even taken Rs.10,400/- per month by estimation of the earnings of the deceased, deducted half towards personal expenses, which comes to Rs.5,200/- per month.

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[3] 2009(3) LS 173 DB = 2011 ACJ 1702.
[4] 2014ACJ 2613

No doubt the evidence of RW.1 driver is running contrary to Ex.A.1-FIR issued by Shaik Sarkar not a witness to the incident. The claim petition saying the deceased was while crossing the road and due to the rash and negligent driving of the driver of the bus dashed the deceased at the centre of the road at divider and bus driver flooded away. Thus, what RW.1 deposed including from the contest of respondent-RTC in the claim petition, the deceased fell under the back left wheel while boarding the bus, slipped from the moving bus no notice is thereby not sustainable and once the same was the conclusion arrived by the Tribunal though it is the contention in the grounds of appeal by the RTC, Tribunal ought to have been fixed equal contribution of the deceased to the accident. There is nothing to interfere with that finding of the Tribunal that the accident was the result of sole negligent of the bus driver. However, coming to the quantum from the two expressions, the monthly earnings of the deceased is Rs.10,400/- per month. By deducting half of the personal expenses, the annual income of the deceased is Rs.5,200/- x 12 = Rs.9,36,000/-, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of estate. Thus, total compensation of Rs.9,71,000/- is just compensation.

Accordingly and in the result the appeal is allowed-in-part by reducing the compensation granted by the tribunal of Rs.10,00,000/- with interest @ 9% per annum to 9,71,000/- with interest @ 7.5% per annum from the date of petition till realization. There is no order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

02.11.2016
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