

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.M.P.No. 2240 of 2010

AND

M.A.C.M.A.No. 100 of 2016

JUDGMENT :

The claimant, mother of the deceased boy aged 8 years, a student of second class, who died in a road accident dated 24.12.2000 at Mangalagiri due to rash and negligent driving of a bus bearing No.AP 10Z 4665 of the 1st respondent, filed MVOP No.1228 of 2007 on the file of the Motor Vehicles Accident Claims Tribunal-cum-Principal District Judge, Guntur (for short 'the Tribunal') under Section 163-A of the Motor Vehicles Act, 1988 claiming compensation of Rs.2,00,000/-. The husband of the claimant is shown as 2nd respondent. By award dated 31.07.2008, the Tribunal, from the evidence of the claimant (P.W.1) with reference to Exs.A.1 to A.4 (FIR, inquest report, P.M. report and M.V.I. report) and the evidence of the Officer of the 1st respondent as R.W.1 with reference to Exs.B.1 to B.4, while finding the accident was the result of rash and negligent driving of the bus driver and had he taken precaution, the deceased boy could not have been run over while crossing the road, however, dismissed the claim petition on the ground that the claimant and her husband received in full quits Rs.60,000/- by expressing willingness and giving Ex.B.3 discharge voucher, Ex.B.4 receipt and Ex.B.2 affidavit undertaking not to lay any claim in Court of law. It is impugning the same, present appeal is maintained with a petition in MACMAMP No.2240 of 2010 for condonation of delay of 518 days in filing the appeal and the reason assigned is due to financial difficulties and poverty the appeal could not be filed.

The 1st respondent, A.P.State Road Transport Corporation being represented by its Managing Director

even served failed to attend. The 2nd respondent, husband of the claimant, even remained ex parte before the Tribunal and even impleaded in the appeal as proforma party and the appeal against him was even dismissed for default for non-payment of bata on 16.02.2015, it is no way fatal vide **Meka Chakra Rao v. Yelubandi Baburao**^[1] as the main claimant is mother and no doubt father also entitled to apportionment. The delay is condoned subject to condition of not entitled to interest but for from today if at all the claimant is entitled for compensation over and above Rs.60,000/- which was received and proved from the evidence on record before the Tribunal.

Heard the learned counsel for the claimant and the 1st respondent as stated supra having been served failed to attend the Court and hence taken as heard.

In fact, Section 28 of the Indian Contract Act, 1872 specifically says that every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary Tribunals, or which limits the time within which he may thus enforce his rights, or which extinguishes the rights of any party thereto, or discharge any party thereto, from any liability under or in respect of any contrary and the expiry of a specified period so as to restrict any party from enforcing his rights, is void to that extent. The exceptions 1 and 2 of this Section are as follows:

“Exception 1 : Saving of contract to refer to arbitration dispute that may arise. This section shall not render illegal contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subject shall be referred to arbitration, and that only and amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Exception 2: Saving of contract to refer question that have

already arisen - Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to reference to arbitration.”

Here, from the evidence of R.W.1 supra also referred by the Tribunal from Exs.B.1 to B.4 with consent not to initiate any legal proceedings, the amount of Rs.60,000/- was received fully and an affidavit was given not to lay any claim in Court of law. That part of the agreement not to enforce legal proceedings is void, though what is being entitled in a legal proceeding of which what is paid of Rs.60,000/- can be deducted to make the further liable. Having regard to the above, the Tribunal is wrong in dismissing the claim exonerating the RTC by ignoring this provision under the Indian Contract Act. Thereby, the award of the Tribunal dismissing the claim is liable to be set aside.

Now coming to the quantum of compensation, the deceased was shown nearly 8 years and student of second class. As per the settled expressions, life is uncertain particularly up to 7 or 8 years and even therefrom under no fault liability Rs.50,000/- is available to award and a further sum of Rs.80,000/- can be awarded for the deceased aged nearly 8 years by the time of accident in the year 2000 proved from the evidence besides Rs.4,500/- towards funeral expenses and loss of estate of the claim under Section 163 of M.V. Act. In all, it comes to Rs.1,34,500/- which is the just compensation being entitled, of which, if the amount of Rs.60,000/- already paid is deducted, the remaining amount comes to Rs.74,500/-.

Accordingly and in the result, the appeal is partly allowed by setting aside the impugned judgment. The claimant is entitled to a further compensation of

Rs.74,500/- together with interest at 7.5% per annum on the said amount from today till realization. There is no order as to costs in the appeal.

Consequently, miscellaneous petitions if any pending in the appeal shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

7th January, 2016
cbs

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