

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.699 OF 2016

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JUDGMENT:

Heard learned counsel for the appellants/ claimants and also learned counsel for 3rd respondent—insurer.

2) The respondent No.1—driver of the ambulance remained exparte before the Tribunal, even served in the appeal failed to attend hence taken as heard. The respondent No.2—owner of the vehicle contested before the Tribunal and in the appeal, earlier notice unserved, this Court on 09.03.2015 directed the petitioners to take out fresh personal notice to respondent No.2, failing which the appeal stands be dismissed without reference to the Court as against respondent No.2. However, it is submitted that there is proof of service and acknowledgement of respondent No.2 within time of four weeks, hence taken as duly served. Respondent No.2 failed to attend, hence taken as heard. Perused the material on record.

3) The delay of 133 days in filing the appeal is condoned subject to condition of not entitled to interest if at all any claim is being held entitled, from the date of award till filing of appeal with delay condonation application on 14.12.2011, for the interregnum period. Perused the material on record.

4) The claim petition was filed O.P. No.131 of 2008 on the file of Motor Accidents Claims Tribunal-cum-Principal District Judge, East Godavari District at Rajahmundry, under Section 166 of M.V Act for a claim of Rs.4,00,000/-, by 1st claimant during his life time for the multiple fractures and other injuries sustained in the motor accident dated 12.06.2004 allegedly due to rash and negligent driving of the driver of the respondent No.1—ambulance van of respondent No.2, insured with respondent No.3. Undisputedly, so far as rash and

negligence of the driver and liability of the owner to indemnify by the insurer, since proved or not concerned, the Tribunal held it could not be proved in ultimate dismissal of the claim. In fact no eye witness examined only second claimant, who is wife of deceased claimant No.1 not an eye witness among LRs 2 to 4 of claimant No.1, deposed with reference to Exs.A1 to A5, Ex.X1 and X2, of which Ex.A1—FIR is registered against respondent No.1—driver of Ambulance van and Ex.A2—charge sheet filed by police after completion of investigation charging said driver is liable for rash and negligent driving and as the manner of accident pleaded is that while claimant No.1 was traveling in the Ambulance with a patient by name Cheepurupalli Rajulu from Rajahmundry to Kakinada Government General Hospital, in the transit, the ambulance turned turtle and the 1st claimant traveling therein sustained the injuries. Once such is the case that itself show on the principle of *res ipsa loquitur*, no more proof is required to say the accident was the sheer negligence of respondent No.1, that too, respondent No.1 remained exparte before the Tribunal and neither the driver nor the owner were examined much less any other witness on behalf of the insurer to dispute the facts pleaded and proved from evidence of PW.1 with reference to Ex.A1—FIR and Ex.A2—charge sheet, showing the accident was the result of rash and negligent driving of the driver—respondent No.1 of the ambulance belongs to respondent No.2 and the vehicle is insured with respondent No.3 is also even not in dispute. The Tribunal should have been held therefrom that the accident was the result of rash and negligent driving is proved from the evidence on record, that too, for no oath against oath, much less anything even from the evidence of PW.1 by cross examination discredited her version to belie or to throw any portion as incredible. The Tribunal totally ignored this aspect in concluding of accident is not proved and in dismissing the claim instead of holding otherwise.

5) From the above, coming to survival of the claim, the law

is fairly settled that the injured who maintained the claim even died and pending the claim not proved of the death was the result of injuries sustained in the accident, the legal representatives can continue the claim as the principle of *actio personalis moritur cum persona* has no strict application in India as held by this Court referring to earlier expression including of the Apex Court that English principle has no strict application to the Indian conditions and this Court categorically held time and again saying in such cases the legal representatives can continue the claim of the injured for entitlement to the claim already maintained for the disability, pain and sufferance besides expenses incurred by the estate of the deceased.

6) Now coming to the quantum, the evidence of PW.2 Dr.B.Ashok Kumar coupled with Ex.A3—wound certificate, Ex.A4—O.P Chit, show the injured sustained nearly 25% permanent disability from the multiple fractures. The age of the injured at the time of his death pending the claim was 39 years and as the claim is under Section 166 of M.V Act, the multiplier applicable is '15' as per ***Sarla Verma vs Delhi Transport Corporation***^[1]. Even in case of injured alive to apply prospective earning capacity also, from that the age and he was drawing, as per Ex.A5—salary certificate, Rs.8,700/- (gross) even taken 10% towards income tax liability and professional tax etc., assessed the net at Rs.7,900/- per month. Even taken 20% of disability out of it, it comes to Rs.2,84,400/- (Rs.1580/- X 12 X 15). Apart from it, Rs.40,600/- even taken towards medical expenses, treatment, extra nourishment, attendant charges, transport charges, loss of earnings, before his death from the injuries during the period of treatment though no proof filed, in all it comes to Rs.3,25,000/- is the just compensation to award.

7) Accordingly and in the result, the appeal is allowed in part by fixing joint liability on the insurer with the driver and owner for

compensation of Rs.3,25,000/- (Rupees three lakhs twenty five thousand only) with interest at 7.5% per annum, from the date of claim petition till date of award of the Tribunal and subsequently again from 15.12.2011 till the date of realization. However, the claimants are not entitled to interest for the interregnum period i.e., from the date of award i.e., 31.08.2010 till the date of filing appeal along with delay condonation i.e., 14.12.2011. There is no order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Dt.08.02.2016
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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