

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.737 of 2010

JUDGMENT:

The respondent/ Andhra Pradesh State Road Transport Corporation (for short 'APSRTC'), Hyderabad, having been aggrieved by the award of the tribunal dated 26.06.2009 in M.V.O.P.No.362 of 2006 maintained by the four claimants, no other than wife, two minor children and mother of the deceased-G.Pamachandraiah, who maintained the claim for Rs.5,00,000/- under Section 166 of the Motor Vehicles Act (for short 'the Act'), alleging that the deceased and pillion rider by name Surendra Babu on 08.04.2006 along with goat keeping in between while proceeding on the motor cycle bearing No.AP 03 M 8744, due to alleged rash and negligent driving of the driver of the bus bearing No.AP 11Z 1140 of the respondent, they both were succumbed and it is on contest by APSRTC of no fault and also the driver as RW.1 not at fault for negligence of the deceased bike rider the accident occurred; the tribunal having held that the accident was the result of rash and negligent driving of the driver of the bus, awarded compensation of Rs.4,58,500/- with interest at 7.5% p.a., impugning the same, maintained the appeal.

2. Heard the learned counsel for the appellant and also the learned counsel for the claimants. Perused the material on record.

3. The very F.I.R. given by the brother of the deceased by name B.Naga Raju, who is eye witness to the accident is with version as if he also proceeding at that time on road, where the accident taken place due to the alleged rash and negligent driving of the bus driver, the bus dashed the motor cycle, due to which the deceased and pillion rider with goat were succumbed. In fact the Motor Vehicle Inspector's Report-Ex.A7 clearly shows the front right corner of the bus pressed inside deeply with damage to the head lamp grill and bumper. It clearly shows the impact of the driving of the bike also but for the contribution of the deceased persons in riding the bike that too along with a living goat in between them they were taking, the accident could not be occurred. Contributory negligence depends upon several factors including size and width of the road, size of the vehicles and on which side of the vehicle that was plying at the time of accident to fix there from with scene observation report if any. There is no scene observation report herein. The eye witness version thereby cannot be given credence even examined as PW.2 more particularly from the circumstantial evidence including Motor

Vehicle Inspector's Report clearly discloses the contribution. In similar facts of bus and two wheeler, the Apex Court in Municipal Corporation of Greater Bombay vs Laxman Iyer¹, held that 25%contribution of the bike rider is reasonable.

4. Coming to the earnings of the deceased, though claimed as Rs.4,500/- p.m., the tribunal taken Rs.3,000/- p.m. The accident was on 08.04.2006. In Lata Wadhwa v. State of Bihar², in the absence of proof of earnings, minimum Rs.3,000/- to be taken into consideration and the accident was about five years after the expression, the earnings of the deceased can be taken at Rs.3,500/- p.m. If 1/4th of the amount is deducted towards personal expenses of the deceased, as dependents are four in number, it comes to Rs.2,625/- p.m. and Rs.31,500/- p.a. and the same is multiplied with the multiplier '17' (applicable from the age of the deceased about 28 years as per Sarla Verma v. Delhi Transport Corporation³, it comes to Rs.5,35,500/-. Apart from the same, the claimants are also entitled to the amount towards loss of estate, funeral expenses, loss of consortium and care and guidance to the minor children. Out of the same, 25%contribution of the deceased deducted and for 75%of the

¹ 2003 (8) SCC 731

² AIR 2001 (SC) 3218

³ 2009 ACJ 1298

APSRTC liability, what the tribunal awarded of Rs.4,58,500/- no way excessive to reduce.

5. Accordingly, the appeal is partly allowed while holding that there is contribution of the deceased bike rider also in causing the accident, however, upholding the quantum of compensation and rate of interest. In other respects, the award of the tribunal holds good. There is no order as to costs.

6. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date:06.01.2017
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