HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.Nos.354 and 700 of 2010

COMMON JUDGMENT :

The 2nd respondent-APSRTC (now TSRTC) is the appellant. The 1st respondent is the bus driver (RW.1). The rider and pillion rider along with another person while proceeding on a two wheeler, from the alleged rash and negligent driving of the driver of the RTC bus bearing No.AP-10-Z-3367 (RW.1), met with death on 02.11.2007. The wife (claimant No.1) being sole dependant, for the brother (claimant No.2) is not dependant on the deceased-rider of the bike, by name, Jabba Srinu, whose age was shown in the postmortem report is about 23 years, but the Motor Accidents Claims Tribunal (V-Additional District Judge (FTC)), Kothagudem (for short, 'the Tribunal) has taken as 25 years by adopting the multiplier '17', since no gap which to the age of the wife from that of the husband, out of the claim under Section 166 of the Motor Vehicles Act (for short, 'the Act') of Rs.4,00,000/- since the Tribunal on contest awarded compensation of Rs.3,58,400/- with interest at 7.5% per annum in O.P.No.578 of 2008, the APSRTC maintained the M.A.C.M.A.No.354 of 2010 by impugning the same.

2. In another claim, the pillion rider, by name, Cheemala Nangaiah, though post mortem report shown 24 years, whose age was also taken 25 years, by adopting the multiplier '17', as no age difference between the age of the claimant No.1-wife to the deceased, the claim maintained under Section 166 of the Motor Vehicles Act

(for short, 'the Act') for a compensation of Rs.5,00,000/- by the wife, two minor children and parents, since awarded by the Motor Accident Claims Tribunal (District Judge), Khammam (for short, the 'Tribunal') of Rs.3,50,000/- on 20.01.2010 in O.P.No.569 of 2008, the RTC maintained M.A.C.M.A.No.700 of 2010.

3. In both the awards since arisen out of same accident in holding the respective compensation besides the first claimant, there is alleged one eye witness was examined, by name, Venkanna and F.I.R., charge sheet, postmortem report and M.V.I report were placed reliance by the claimants.

4. The contentions in the grounds of two appeals commonly raised by the RTC in nut shell vis-à-vis the oral submissions of learned counsel for the appellant are that the Tribunal gravely erred in not considering the contribution of the deceased persons, who were proceeding on wrong side that resulted the accident, for no fault of the bus driver, that is also evident from the bus driver examined and deposed as RW.1 and there is a triple riding also per-se to be presumed contributed to the accident and the compensation awarded is excessive and exorbitant and the claim petitions are not maintainable for non impleadment of the owner and insurer of the two wheeler, in which the deceased persons in the two claims were proceeding along with another person, hence to set aside the awards by exonerating the RTC or otherwise to fix contributory negligence.

5. Whereas, it is the submission of learned counsel for the claimants that the awards of the Tribunal hold good, but for no cross-

objections, the compensation awarded are utterly low to enhance, hence to dismiss the appeals.

6. Heard.

7. Perused the material on record for common disposal of two appeals out come of same accident.

8. A perusal of the M.V.I. report clearly shows the bus was damaged on left front portion. The evidence on record including the eye witness version of PW.2 shows at the time of accident the two wheeler was with triple riding and the bus were proceeding in opposite direction. If the bike and the bus were proceeding in right direction, while proceeding in opposite direction if at all there is a fault of bus, the damage is to the right front portion of the bus, but shall not be to the left front partition of the bus and that itself shows the bike was proceeding in wrong side. Thereby besides the triple riding, there is contribution from above facts including from the Ex.A.4 M.V.I. report. The contribution depends upon several factors i.e., size of the road, extent of damage from M.V.I. report, who are in wrong side and size of the vehicle, etc., The Apex Court in **Municipal Corporation of Greater Bombay v. Laxman Iyer and another**[1]**,** in similar situations, fixed 25% contribution of the bike rider and the 75% contribution of the bus driver.

9. Having regard to the above, fixing entire liability on the RTC as if for rider and pillion rider with triple riding with no negligence

[1] 2003 (8) SCC 731

arrived by the Tribunal is unsustainable and to modify to that extent therefrom.

10. Coming to the quantum of compensation in the two claims for the respective deceased persons, for no proof of income from the accident dated 02.11.2007, minimum Rs.3,600/- per month is to be taken as monthly earnings of the respective deceased persons.

11. The appeal covered by M.A.C.M.A.No.354 of 2010 of O.P.No.578 of 2008, the wife is only dependant for brother of the deceased is not dependant, even then, if 1/3rd deducted towards personal expenses, it comes to Rs.2,400/- and the contribution arrived at Rs.4,89,600 (Rs.2,400 x 12 x 17). Apart from, the 1st claimant is entitled to a sum of Rs.50,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of estate, in all Rs.5,74,600/-. In that amount, 25% contribution of the deceased to deduct comes to Rs.1,43,650/-. Thus, what the Tribunal awarded of Rs.3,58,400/- is no way excessive even after fixing contributory negligence.

12. Even coming to M.A.C.M.A.No.700 of 2010, the claimants are five in number, if 1/4th to be deducted towards personal expenses of the deceased, the contribution is Rs.2,700/- per month and the contribution arrived at Rs.5,50,800 (Rs.2,700 x 12 x 17). Apart from it, the claimants are entitled to a sum of Rs.50,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of estate besides an amount of Rs.20,000/- towards care and guidance for the two minor children, in all Rs.6,55,800/-. In that

amount, 75% contribution of the RTC comes to Rs.4,91,950/- and what the Tribunal awarded of Rs.3,50,000/- is no way excessive, but for no cross-objections to enhance.

13. Accordingly and in the result, both the appeals are dismissed for nothing to interfere with the quantum though there is no contributory negligence of the deceased persons fixed by the Tribunal even taken by this Court.

14. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

Dr. B. SIVA SANKARA RAO, J

3rd January 2017

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