HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.994 OF 2010

JUDGMENT:

The appellant is the 2nd respondent-Municipality in the M.V.O.P.No.205 of 2007 under Section 166 of the Motor Vehicle Act,1988 *(for short, 'the Act')* for a claim of Rs.15,00,000/- on the file of the learned Chairman of the Motor Accidents Claims Tribunal–cum-Prl.District Judge, Kadapa (*for short, 'Tribunal')*, filed by the claimants 3 in number, no other than wife and two minor children of the deceased by name Emma Manoharlal against the owner of the vehicle bearing No. Tata Sumo van bearing No.AP 03F 7899 and the Municipal Corporation and showing mother of the deceased as proforma 3rd respondent, for the death of said Emma Manoharlal aged about 42years as per Ex.A.1 and A.3 in the motor accident dated 27.05.2006, at about 7.50p.m. The averments show that while the deceased was travelling in said vehicle belongs to the 1st respondent hired with the 2nd respondent-Municipal Corporation, Kadapa, the vehicle turned turtle and fell down into a ditch and fallen on him which is due to rash and negligent driving of driver of the said vehicle, resulting instantaneous death of said Manoharlal. It was on contest by R.2-Municipal Corporation, from the R.1 remained exparte before the tribunal, the tribunal from the evidence on record of P.Ws. 1 and 2 and Exs.A.1 to A.9 and R.W.1 employee of R.2 Municipality by its award dated 11.02.2010 granted compensation as prayed for though arrived amount more than that and with interest at 6%p.a. by fixing liability against respondents 1 and 2.

2. Impugning the said award, the 2nd respondent-Municipal Corporation preferred the appeal with the contentions in the grounds of appeal that the tribunal ought to have seen that the burden lies with the

1st respondent-owner who hired the crime vehicle to it to pay the compensation if any to the deceased employee of the Corporation, that the tribunal ought to have passed personal decree against the owner of the crime vehicle as not insured, instead of passing against the Corporation, that the tribunal ought to have seen that the crime vehicle was used by the deceased employee for his personal work, after working hours of the office hours without obtaining prior permission from his superiors, agreeing to pay the user charges to the corporation, that the tribunal brushed away the contention of the Municipal Corporation that the deceased used the offending vehicle outside the territorial jurisdiction of the Municipal Corporation, that the tribunal ought to have seen that the deceased went to Jammalamadugu to call on his mother which was a private work and hence, there is no burden on the Municipal Corporation to pay compensation and the tribunal erred in holding that the owner is not answerable to the claim petition, hence to set aside the award of the tribunal by allowing the appeal. The learned counsel for the appellant-Municipality reiterated the same during course of hearing.

3. It is the submission of the learned counsel for the claimants that the award of the tribunal holds good and there is nothing to interfere with the award of the tribunal for this Court while sitting in appeal. Hence to dismiss the appeal.

4. Perused the material on record.

5. The vehicle in question belongs to the claim petition 1st respondent under hire with 2nd respondent-Municipality at the time of the accident is not in dispute. The 2nd respondent-Municipality is also within the meaning of owner along with the owner of the vehicle. Once the Municipality employee, the deceased, using the vehicle met with

accidental death, it is required to be seen whether it is in the course of employment. The factum of the vehicle under hire with the Municipality and under his control for use in the course of employment of the Municipality not in dispute. Thus, even to say there is any transgression under the guise of official discharge of duties using for private purpose, the claimants are entitled to compensation. However it is made clear that whatever the benefits the deceased is entitled from the death in the course of service includes in the amount that is payable as compensation fixed by the tribunal as per the analogy of the latest expression of the Apex Court in Reliance General Insurance Company Limited Vs. Shashi Sharma[1]. In Shashi Sharma, it is held in this regard that *"Indeed, similar statutory exclusion of claim receivable under the 2006 Rules is absent. That, however, does not mean that the Claims Tribunal should remain oblivious to the fact that the claim towards loss of pay and wages of the deceased has already been or will be compensated by the employer in the form of ex-gratia financial assistance on compassionate grounds under Rule 5(1). The Claims Tribunal has to adjudicate the claim and determine the amount of compensation which appears to it to be just. <u>The amount receivable by the dependants/claimants towards the head of "pay and allowances" in the form of ex gratia financial assistance, therefore, cannot be paid for the second time to the claimants. True it is, that the2006 Rules would come into play if the government employee dies in harness even due to natural death. At the same time, the 2006 Rules do not expressly enable the dependants of the deceased government employee to claim similar amount from the tort feasor or insurance company because of the accidental death of the deceased government employee. The harmonious approach for determining a just compensation payable under the 1988 Act, therefore, is to exclude the amount received or receivable by the dependants of the deceased government employee under the 2006 Rules towards the head financial assistance</u>*

[1] (2016) 9 SCC 627

equivalent to "pay and other allowances" that was last drawn by the deceased government employee in the normal course. This is not to say that the amount or payment receivable by the dependants of the deceased government employee under Rule 5(1) of the Rules, is the total entitlement under the head of "loss of income'. So far as the claim towards loss of future escalation of income and other benefits is concerned, if the deceased government employee had survived the accident can still be pursued by them in their claim under the 1988 Act. For, it is not covered by the 2006 Rules. Similarly, other benefits extended to the dependants of the deceased government employee in terms of sub-rule(2) to sub-rule(5) of Rule 5 including family pension, life insurance, provident fund etc., that must remain unaffected and cannot be allowed to be deducted, which, any way would be paid to the dependants of the deceased government employee, applying the principle expounded in Helen C.Rebello Vs. Moharashtra, SRTC[2] *and United India Insurance Company Limited Vs. Patricia Jean Mahajan*[3].

6. Having regard to the above and in the result, the appeal is disposed of while upholding the compensation, however entitling the appellant-Municipal Corporation, Kadapa, to deduct out of said amount payable, any payment made to the claimants departmentally towards the benefits of death in the course of employment in the form of funeral expenses, ex gratia, financial assistance in any form including any payment in lieu of compassionate appointment etc. There is no order as to costs. Pending miscellaneous petitions, if any, in this appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:03.01.2017
Vvr

[2] (1999) 1 SCC 90=(1999) SCC (Crl) 197
[3] (2002) 6 SCC 281