

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.731 OF 2010

JUDGMENT:

The 2nd respondent—APSRTC, now TSRTC, among two respondents including driver of the bus bearing No.AP 10 Z 4545 of Mahaboobnagar Depot, Warangal District, maintained the appeal against the award passed on 27.04.2009 in O.P. No.68 of 2006 on the file of Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge at Khammam (for short 'the Tribunal') which was maintained by the claimants, who are none other than father and sister of the deceased Shaik Hussain, aged about 24 years as per ExA4—post mortem report, under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), for a compensation of Rs.3,10,000/-, from the contest of RTC, the Tribunal, having held that the accident was the result of rash and negligent driving of the driver of the bus and awarded compensation of Rs.5,68,666/- with interest at 7.5% per annum by fixing joint liability against respondents 1 and 2.

2) The contentions in the grounds of appeal vis-à-vis oral submissions of the learned standing counsel for TSRTC are that the Tribunal gravely erred in coming to the conclusion that the accident was the result of rash and negligent driving of the bus driver and ought to have held that the deceased equally contributed to the accident and did not properly appreciate the evidence of PW.2 with reference to Ex.A1—FIR, Ex.A2—charge sheet. The Tribunal should have considered that there is no proof regarding the earnings of the deceased at Rs.3,750/- per month

and the compensation claimed is with no basis. It is also contended that what the Tribunal awarded of more than the amount claimed by the claimants is thereby exorbitant and unsustainable, 2nd claimant is not at all dependent on the deceased being sister but for on her father—1st claimant and thereby sought for allowing the appeal fixing contributory negligence and reduce the compensation from what is awarded, which can not be beyond what is claimed.

3) Whereas it is the submission of the learned counsel for the respondents/ claimants that the award of the Tribunal holds good and for this Court while sitting in appeal, there is nothing to interfere with the award, hence to dismiss the appeal

4) Heard and perused the material on record.

5) A perusal of the record shows that the deceased was a cyclist. The accident taken place on 13.07.2007 at about 11.00 a.m., while he was proceeding on his cycle to Chaveti Thanda for centering work, from the rash and negligent driving of the bus driver—1st respondent belonging to the RTC—2nd respondent. Ex.A1—FIR was lodged against 1st respondent bus driver. PW.2 is an eye witness to the accident. According to him, he is having a cycle shop at Bayyaram centre on the main road, while the deceased was proceeding in front of the bus in a drunken state, he lost control over the cycle and fell down on the road and the bus did not touch cycle nor the deceased. His evidence is contrary to Exs.A1 and A2. Even from said version of

PW.2 of really the deceased under drunken state of mind proceeding on cycle in front of bus, the finder of last opportunity is with R1—bus driver. Ex.A4—Post mortem report substantiates to arrive the conclusion.

6) Now coming to the quantum of compensation, from absence of proof of earnings of deceased, as per **Latha Wadhwa vs State of Bihar**¹ minimum Rs.3,000/- p.m. to be taken, as the accident occurred was nearly six years after said expression, the earnings of the deceased with prospective increase can be taken at Rs.3,600/- p.m.; as the claim is maintained under Section 166 of M.V Act and the deceased was unmarried half to be deducted towards personal expenses of the deceased as per **Sarla Verma vs Delhi Transport Corporation**²; among two claimants, the father is the only dependent on the deceased and as per the claim petition, his age shown as 45 years, the multiplier applicable is '14' as per Sarla Verma (supra), the loss of dependency comes to Rs.3,02,400/- (Rs.1800/- X 12 X 14). Apart from it, the claimants are entitled to Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of estate, in all it comes to Rs.3,37,400/-, rounded to Rs.3,40,000/-, which is the just compensation.

7) Accordingly and in the result, the appeal is partly allowed reducing the compensation from Rs.5,68,666/- (Rupees five lakhs sixty eight thousand six hundred sixty six only) to

¹ AIR 2001 SC 3218

² 2009 ACJ 1298

Rs.3,40,000/- (Rupees three lakhs forty thousand only). In other respects, the award of the Tribunal holds good. No order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Dt.15.03.2017
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Date: .03.2017

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