

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A No.680 OF 2010

JUDGMENT:

The claimants, four in number including 3rd respondent mother of deceased Sriram Chandramouli, maintained O.P. No.1235 of 2003 on the file of Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge at Nalgonda (for short 'the Tribunal') under Section 163-A of Motor Vehicles Act, 1988 (for short 'M.V.Act') for a compensation of Rs.4,00,000/- against owner and insurer of Maruthi Zen Car bearing No.AP 29 B 5770 on account of death of Sriram Chandramouli, aged about 33 years as per Ex.A4—post mortem report; with averments that on 05.12.2003 the deceased, who was owner-cum-driver of auto bearing No.AP 13V 2244, was proceeding towards Saroornagar in order to get some school going children dropped at their residences, at about 5.30 pm due to alleged rash and negligent driving of the driver of car bearing No.AP 29 B 5770 of 1st respondent insured with 2nd respondent dashed the auto, as a result he sustained injuries. From the contest of 2nd respondent—insurer, the Tribunal having arrived at the compensation of Rs.4,17,500/- with interest at 7.5% per annum by apportioning 50% contribution of the deceased auto owner-cum-driver and 50% contribution against the driver and owner of the car i.e., respondents 1 and 2, awarded compensation of Rs.2,08,750/- with interest at 7.5% per annum on 20.06.2006. It is impugning the quantum of compensation as utterly low, the claimants maintained the present appeal.

2) It is the contention of the learned counsel for claimants that the Tribunal erred in fixing contributory negligence of 50% against the deceased driver and driver of the car, which is unsustainable and in

not awarding conventional sums as sought for and prayed to allow the appeal.

3) Whereas it is the contention of the learned standing counsel for insurer that the award of the Tribunal holds good and for this Court while sitting in appeal, there is nothing to interfere as the deceased is not a third party apart from that the deceased was owner-cum-driver of the auto and the accident was the result of sheer negligence of the deceased but for not on the part of the owner of the car. Hence, prayed to dismiss the appeal.

4) Heard both sides and perused the material on record.

5) A perusal of the record shows that the claim is maintained under Section 163-A of M.V Act. The matter is pending before the larger bench of the Apex Court on correctness of expression of **National Insurance Corporation Limited vs Sinitha**¹ which is without referring to the earlier expression of the Three Judge Bench of the Apex Court in **Deepal Girishbhai Soni vs United India Insurance Company Limited**² in doubting the correctness of Two Judge Bench decision in **Oriental Insurance Company Limited vs Hansrabhai vs Kodala**³. In fact Deepal Girishbhai Soni (supra) holds the claim is under no fault liability and once the vehicle is in use the liability is there. As the deceased is not a third party for he is owner-cum-driver of his own vehicle, from the peculiar facts of the case, instead of otherwise fixing liability entirely on the owner and insurer of the car to seek contribution against the auto driver and since the Tribunal already arrived at

¹ (2012) 2 SCC 356

² [(2004) 5 SCC 385 : AIR 2004 SC 2107]

³ (2001) 5 SCC 175

50% contribution, on the submission of both sides to fix contribution referring to Sinitha (supra), the appeal is taken up for disposal.

6) A perusal of the record shows both vehicles were proceeding in opposite direction. As contributory negligence depends upon several factors including condition of road, size of the vehicle and to the extent of damage on which side of each of the two vehicles and there is no MVI report or scene observation report presented by either side to get the same. Here size of the vehicle is also a criteria and if such is being taken into consideration, it is just to fix 30% liability of the auto driver and 70% liability of the car driver to make the respective owners liable. Here without prejudice to the claim of personal accident claim coverage by family of the deceased for which the claim is not maintainable under MV Act but either under Consumer Protection Act or otherwise from the above, the appeal is disposed of fixing 75% liability of the respondents to the claim petition.

7) Coming to the quantum of compensation, as the claim is under Section 163-A of M.V Act and as per Schedule-II, in the absence of proof of earnings, only Rs.15,000/- per annum is to be taken as earnings. However, from the settled expression of the Apex Court in **Kishan Gopal vs Lala**⁴ the said earnings of Rs.15,000/- is to be read as Rs.30,000/- per annum. However, from the evidence on record before the Tribunal, the earnings of the deceased are estimated at Rs.3,300/- per month with

⁴ 2014 (1) SCC 244

prospective increase. If such is taken into consideration, 1/3rd to be deducted towards personal expenses and as per Schedule-II of M.V Act, the multiplier applicable, for the persons aged between 31-35, is '17' and the loss of dependency comes to Rs.4,48,800/- (Rs.2,200/- X 12 X 17). Apart from it, the claimants are entitled to Rs.5,000/- towards loss of consortium and Rs.2,500/- towards loss of estate and Rs.2,000/- towards funeral expenses as per Schedule II of M.V Act. In all it comes to Rs.4,58,300/-, out of which, 70% therein comes to Rs.3,20,810/- is the just compensation, which is entitled to the claimants and 3rd respondent.

8) Accordingly and in the result, the M.A.C.M.A. No.680 of 2010 is partly allowed enhancing the compensation from Rs.2,08,750/- (Rupees two lakhs eight thousand seven hundred fifty only) to Rs.3,20,810/- (Rupees three lakhs twenty thousand eight hundred ten only) with interest at 7.5% per annum from the date of petition till realisation. However, it is made clear that without prejudice to the right of the claimants to proceed with P.A. coverage of the deceased, if any, against the insurer of the auto separately, to that extent to approach Consumer Forum or Civil Court as the case may be. In other respects the award of the Tribunal holds good. No order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

Dt.26.04.2017
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