

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.995 OF 2008

JUDGMENT:

The Andhra Pradesh State Road Transport Corporation preferred the instant appeal aggrieved of the order, dated 29-03-2006, in O.P. No.1205 of 2004, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - Additional Metropolitan Sessions Judge for trial of Jubilee Hills Car Bomb Blast Case - cum - Additional Family Judge - cum - XXIII Additional Chief Judge, Red Hills, Nampally, Hyderabad, whereby and whereunder an amount of Rs.5,85,000/- was awarded towards compensation as against the claim of Rs.5,50,000/-, laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') and Rule 455 of the Rules made thereunder read with Section 140 of the Act, for the death of one Sudershan, who is husband, son and father of the respective claim petitioners.

2. The appellants herein viz., Andhra Pradesh State Road Transport Corporation (for short 'Corporation') are respondent Nos.1 and 2 in the O.P. before the Tribunal, while respondent Nos.1 to 5, who are wife, mother and children, respectively, of Sudershan, who died in the instant case, are petitioner Nos.1 to 5 (claimants).

3 . For the sake of convenience, the appellants are hereinafter referred to as Corporation and the respondents as petitioners.

4. The facts, in brief, are that on 06-03-2004, while Sudershan was returning to his shop after attending to his work, when he reached near APSRTC bus stand Miryalaguda on a Hero Honda Motorcycle

bearing No.KA-04-V-5784, in front of the APSRTC bus stand, Corporation bus bearing No.AP11-Z-2802, came in a rash and negligent manner and dashed his motorcycle, due to which, he sustained grievous injuries and immediately he was shifted to area hospital at Miryalaguda and on the advice of the doctors, he was shifted to Kamineni Hospital, Hyderabad, where, while undergoing treatment, he succumbed to injuries at 8-25 p.m. on the same day. The Station House Officer, Miryalaguda Police Station registered a case in Crime No.44 of 2004 initially, for the offence punishable under Section 338 of I.P.C. and later altered the same to the offence punishable under Section 304-A IPC.

5 .The petitioners contending that Sudershan, who is hereinafter referred to as 'deceased', was working as a Clerk in Sri Venkata Ramana Agencies, Fertilizers and General Merchants, Miryalaguda, earning Rs.4,800/- per month and he was mostly contributing the same to the family, sought to grant an amount of Rs.5,50,000/- with interest at 18% per annum against the respondents.

6 .Both the respondents filed common counter opposing the claim raising various pleas and attributing rash and negligent driving to the deceased himself and finally sought to dismiss the claim petition.

7 .On the basis of the above pleadings, the Tribunal framed three (3) issues in the direction of fixing responsibility for the accident. During enquiry, petitioner No.1, wife of the deceased, was examined as PW.1, employer of the deceased as PW.2 and an eye-witness to the accident as PW.3 and marked Exs.A-1 to A-12 in order to substantiate their claim. On behalf of the respondents, K.V.R. Babu, who was driver of the Corporation bus at the time of accident, was examined as RW.1, but, no documents were filed.

8. The Tribunal, on issue No.1, having found from the evidence of PW.3 supported by Exs.A-1 to A-7, rash and negligent driving on the part of RW.1, the driver of the bus at the relevant time, held it in favour of the petitioners.

9. On issue No.2, basing on the evidence of PW.2, employer of the deceased, and contents in Exs.A-4, A-5 and A-9 to A-12, accepted salary of the deceased as Rs.4,500/- per month and having deducted $\frac{1}{3}$ rd i.e., Rs.1,500/- ($\text{Rs.4,500/-} \times \frac{1}{3}$) therefrom towards his personal expenses, arriving at Rs.3,000/- ($\text{Rs.4,500/-} - \text{Rs.1,500/-}$) per month or Rs.36,000/- ($\text{Rs.3,000/-} \times 12$) per annum towards his contribution to the family, and since he was found 36 years old, applying multiplier '15', worked out the loss of dependency at Rs.5,40,000/-. Besides the same, conventional sum of Rs.15,000/- towards loss of consortium to petitioner No.1, Rs.15,000/- towards loss of estate and Rs.5,000/- towards transportation and funeral expenses and Rs.10,000/- towards loss of love and affection were awarded, thus making a total sum of Rs.5,85,000/-, with interest at 6% per annum, which, of course, is more than the claim amount of Rs.5,50,000/-.

10. It is the aforesaid order, which is under challenge in the instant appeal contending in the grounds of appeal that the Tribunal went wrong in holding that the accident occurred due to rash and negligent driving of the driver of the Corporation bus. It is also stated that the Tribunal was wrong in taking the age of the deceased as '36' years since age of the eldest son of the deceased is shown as '16' years. It is also stated that the Tribunal was not right in fixing monthly income of the deceased at Rs.4,500/- without looking at the qualification of the deceased. It is further stated that the Tribunal was wrong in applying multiplier '15' following Schedule - II to Section 163-A of the Act, as the claim was not laid under Section 163-A of the Act and laid under Section 166 of the Act.

It is also stated that the Tribunal has granted Rs.5,85,000/- towards compensation, though, the claim was only for Rs.5,50,000/-, and, therefore, sought to set aside the order and decree under challenge.

11. Heard Sri N. Vasudeva Reddy, learned counsel for the Corporation (appellant).

12. No representation for the claim petitioners (respondent Nos.1, 3, 4 and 5.

13. Though, respondent No.2 was not served, it makes no difference since the decree was already passed and as she is one of the heirs of the deceased and the other heirs were already available on record represented by their counsel.

14. Perused the order under challenge and evidence on record, both, oral and documentary, let in by the respective parties.

15. So far as the finding on issue No.1 is concerned, it does not suffer from any legal infirmity since it is well reasoned and based on appreciation of evidence on record let in by the petitioners through PW.3 and disbelieving the evidence of RW.1.

16. Concerning determination of compensation, the evidence of PW.2, who was employer of the deceased, would show that he has not only filed register of the firm, Sri Venkata Ramana Agencies and Fertilizers and General Merchants, also filed renewal certificate of registration to show that PW.2 was Managing Partner of the firm besides filing Ex.A-10 attendance register extract from April, 2003 to March, 2004. On the basis of the register for the said period, five (5)

persons were employed under him and the Tribunal having found the said documentary evidence as genuine, finding that the deceased was working as Clerk in the said firm drawing a salary of Rs.4,500/- per month, taking his age as 36 years, applying multiplier 15, by deducting $\frac{1}{3}$ rd therefrom i.e., Rs.1,500/- (Rs.4,500/- x $\frac{1}{3}$) towards his personal expenses, arriving at Rs.3,000/- (Rs.4,500/- - Rs.1,500/-) per month or Rs.36,000/- (Rs.3,000/- x 12) per annum as the contribution of the deceased to his family, worked out loss of dependency at Rs.5,40,000/-. Since even according to the decision of the Hon'ble Apex Court in **Sarla Verma v. Delhi Transport Corporation**, for the age group between 35 and 40 years, the appropriate multiplier is '15', and, therefore, no infirmity is to be found as regards application of multiplier also. Even as regards monthly earnings of the deceased at Rs.4,500/-, the finding recorded by the Tribunal cannot be faulted as it is based on the evidence of PW.2 and documentary evidence, the genuineness of which cannot be doubted. Concerning conventional sums, awarded by the Tribunal also there cannot be any infirmity in view of the decision of the Hon'ble Apex Court in **Ramilaben Chinubhai Parmar and others v. National Insurance Company and others**, rendered on 23-04-2014 in Civil Appeal Nos.6091-6092 of 2011, up to Rs.50,000/- .

17. It is no doubt true, the Tribunal awarded Rs.5,85,000/- as against Rs.5,50,000/- and no reasons are assigned for the same, but, in view of the recent decisional law of the Hon'ble Apex Court in **Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**, even the award of Rs.5,85,000/-, which exceeds the claim amount of Rs.5,50,000/- cannot be disturbed.

18. The appeal is, therefore, dismissed confirming the order and decree under challenge. There shall be no order as to costs.

19. As a sequel thereto, Miscellaneous Applications, if any, pending shall stand closed.

A. SHANKAR NARAYANA, J

April 10, 2015.

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