

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

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M.A.C.M.A.No.791 of 2009

JUDGMENT:

This appeal is filed by the A.P.S.R.T.C. challenging the judgment and award dated 16.09.2006 passed in O.P.No.705 of 2005 on the file of the III Additional Metropolitan Sessions Judge-cum-XVII Additional Chief Judge, Hyderabad.

2. For the sake of convenience, the parties are hereinafter referred to as they are arrayed in the O.P. before the Tribunal.

3. The facts leading to filing the present appeal, in brief, are as follows:

On 23.07.2004 at about 8.45 p.m. M.Krishna @ Kishan (hereinafter referred to as 'the deceased') was proceeding to I.S.Sadan on a scooter bearing No.AP 11 5390 from Pallavi talkies and one N.Ravi Kumar was the pillion-rider. When the scooter reached the main road opposite to bone setting shop, driver of the R.T.C.bus bearing No.AP 10 Z 1641 came from Saidabad X roads in a rash and negligent manner and hit the scooter, resulting the deceased and the pillion-rider have sustained injuries on various parts of the body. Immediately after the accident, the deceased was shifted to Osmania General Hospital, wherein he succumbed to injuries. The Station House Officer, Saidabad registered a case in Crime No.270 of 2004 under Section 304-A IPC against the driver of the R.T.C. bus. By the time of death, the deceased was aged about 29 years and used to earn Rs.6,000/- per month. Petitioner No.1 is the mother, Petitioner No.2 is the wife and petitioner Nos.3 to 5 are the children of the deceased and they are dependents on the income of the deceased. The bus involved in the accident belongs to respondents 1 and 2. Hence both the respondents are liable to pay

the compensation to the petitioners. Hence, the petitioners filed the claim petition claiming compensation of Rs.5,00,000/- against both the respondents.

4. The respondents 1 and 2 filed common counter denying all the averments made in the petition *inter alia* contending that the accident occurred due to the rash and negligent driving of the scooter by the deceased and there was no negligence on the part of the driver of the R.T.C. bus. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. It is the duty of the petitioners to prove the age and income of the deceased by the time of his death. Hence, the petition may be dismissed.

5. Basing on the above pleadings, the Tribunal framed the following issues:

1. Whether the death of the deceased M.Krishna caused due to rash and negligent driving of the R.T.C. bus bearing No.AP 10 Z 1641, by its driver?
2. Whether the petitioners are entitled to claim any compensation and if so, to what amount and from whom?
3. To what relief?

6. During the course of trial, on behalf of the petitioners, PWs.1 and 2 were examined and Exs.A.1 to A.8 were marked. On behalf of the respondents, no oral or documentary evidence was adduced.

7. Basing on the evidence oral and documentary and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the RTC bus and allowed the petition in part by awarding a compensation of Rs.4,70,000/-.

8. Being aggrieved by the judgment and award of the Tribunal, the respondent Corporation preferred the present appeal.

9. Heard Sri N.Vasudeva Reddy, the learned counsel for the appellants/respondents and A.Ananda Rao, learned counsel for the respondents/claimants.

10. It is the contention of the learned counsel for the respondents/appellants that the finding of the Tribunal on Issue No.1 is not sustainable either on facts or on law. He further submitted that the Tribunal failed to consider that the accident occurred due to the negligence of the deceased also. He further contended that the Tribunal has applied wrong multiplier. Per contra, learned counsel for the respondents/claimants submitted that the Tribunal awarded just and reasonable compensation. He further submitted that the Tribunal applied the multiplier '18' by following the second schedule of Section 163(A) of the Motor Vehicles Act.

11. Basing on the rival contentions, the points that arise for consideration in this appeal are:

1. Whether there was any contributory negligence on the part of the deceased, if so, to what extent?
2. Whether the multiplier applied by the Tribunal, i.e., '18' is correct or not?
3. Whether the Tribunal has awarded just and reasonable compensation or not?
4. To what relief?

12. To prove the manner of the accident and the factum of the death of the deceased, on behalf of the petitioners P.Ws.1 and 2 were examined and Exs.A1 to A6 were marked. On behalf of the respondents, no oral or documentary evidence was adduced. As seen from the testimony of P.W.1, the accident occurred due to rash and negligent driving of the driver of the RTC bus. Admittedly, P.W.1 is not an eyewitness to the accident, therefore, her testimony is not much helpful to prove the manner of the accident. A perusal of the testimony

of P.W.2 reveals that by the time of accident, he was travelling on the scooter as a pillion-rider. As per the testimony of P.W.2, the accident occurred due to rash and negligent driving of the driver of the R.T.C. bus. In the cross-examination, P.W.2 in unequivocal terms denied the suggestion that the accident occurred due to rash and negligent driving of the scooter by the deceased. In the cross-examination of P.W.2, nothing is elicited positively to substantiate the stand taken by the respondents. A perusal of Ex.A1 reveals that P.W.2 is the *de facto* complainant. A perusal of Ex.A4 charge sheet reveals that the accident occurred due to the rash and negligent driving of the driver of the RTC bus. The oral testimony of P.W.2 is supported by Exs.A1 and A4. The contention of the learned counsel for the second respondent is that P.W.2 is an interested witness, therefore, his testimony cannot be looked into. In the instant case, whatever deposed by P.W.2 is fully supported by documentary evidence. Simply because at the time of accident, P.W.2 was pillion-rider on the scooter, that itself is not a sufficient ground to brand him as an interested witness. There are no grounds, much less valid grounds to discard the testimony of P.W.2.

13. The respondent has taken a plea in the counter that the deceased was also responsible to cause the accident. The Tribunal has not framed an issue with regard to the contributory negligence on the part of the deceased. The respondent has not taken any steps for recasting of the issue before the Tribunal. While appreciating the oral and documentary evidence, the Court has to take into consideration the other attending circumstances also. If really, the accident had taken place due to the negligence of the deceased also, what prevented the driver of the RTC bus to lodge a complaint to the police after the accident. The respondent Corporation also has not taken any steps to lodge a complaint narrating the manner of the accident. The respondent Corporation has not taken any steps to examine the driver of the RTC bus or any other eyewitness to the accident to substantiate

the stand taken by it. The respondent corporation has not evinced any interest to adduce any evidence to demolish the stand taken by the petitioners/claimants with regard to the manner of the accident is concerned. As observed earlier, the oral testimony of P.Ws.1 and 2 is fully supported by Ex.A1 FIR and Ex.A4 charge sheet so far as the manner of accident is concerned. Absolutely, there is no material on record to establish that the deceased was also responsible to cause the accident. A perusal of Ex.A2 post-mortem report and Ex.A3 inquest panchanama clearly reveal that the deceased died due to injuries sustained by him in the accident. There are no grounds much less valid grounds to set aside the finding of the Tribunal on issue No.1. In the light of the foregoing discussion, this Court is of the considered view that the accident occurred due to the rash and negligent driving of the driver of the RTC bus, which resulted in death of the deceased.

14. **Point Nos.2 and 3:** A perusal of the record reveals that the deceased was aged about 29 years by the time of his death. The Tribunal by following the second schedule to 163-A of the Motor Vehicles Act, applied multiplier '18'. The contention of the learned counsel for the appellants-respondents is that the appropriate multiplier for the age of 29 years is '17' as per the principle enunciated in ***Sarla Verma Vs. Delhi Transport Corporation***^[1]. In this case, the judgment was delivered on 16.09.2006, i.e., much prior to the judgement of Sarla Verma case. If the Tribunal applies multiplier '17', the loss of dependency comes to Rs.4,08,000/-. The Tribunal awarded an amount of Rs.15,000/- towards loss of consortium. As per the principle enunciated in Sarla Verma (cited supra) case, the Tribunal can award upto Rs.1.00 lakh towards consortium. This Court is very much conscious that the claimants have not filed any appeal. Therefore, it is not fair on the part of this Court to enhance the consortium from Rs.15,000/- to Rs.1.00 lakh. As per the principle

enunciated in *Ranjana Prakash Vs. Divisional Manager*^[2], in case any appeal is filed either by the insurance companies or by the respondents, the court can change the amount awarded by the Tribunal under different heads out of the compensation awarded by the Tribunal.

15. Having regard to the facts and circumstances of the case, I am of the considered view that awarding of an amount of Rs.4,70,000/- in this case is just and reasonable to meet the ends of justice. Viewed from factual or legal aspects, there are no grounds much less valid grounds to interfere with the judgment and award passed by the Tribunal. At the time of arguments, learned counsel for the respondents-claimants submitted that the claimants 1 and 2 have already withdrawn their share of compensation amount. Having regard to the facts and circumstances of the case, I am of the considered view that it is not a fit case to interfere with well considered judgment and award passed by the Tribunal.

16. In the result, the appeal is dismissed. There shall be no order as to costs.

17. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

2nd February, 2015
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^[1] . 2009 ACJ 1298

^[2] 2011 (8) Scale-240