

**HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

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**CIVIL MISCELLANEOUS APPEAL No.1901 OF 2004**

**JUDGMENT:**

The instant appeal is preferred by the Andhra Pradesh State Road Transport Corporation, represented by its General Manager, Musheerabad, Hyderabad (for short, 'Corporation'), which is respondent No.2 in O.P. No.99 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, West Godavari District at Eluru (for short, 'the Tribunal') aggrieved by the award and decree dated 04.02.2004 passed in the said original petition granting compensation of Rs.17,07,000/-, as against the claim of Rs.20,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') read with Rule 455 of the Rules framed thereunder for the death of one Siva Rama Krishna, who was the husband of respondent No.1 and son of respondent No.2 herein, on the ground that the said compensation is highly excessive.

2. Respondent Nos.1 and 2 herein are petitioner Nos.1 and 2, while respondent No.3 herein and the appellant, who are driver and owner of the RTC bus bearing registration No.AEZ 4317, respectively, were respondent Nos.1 and 2, respectively, in the original petition.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The fact-situation occurring in the instant case is that on 31.08.1999, the said Siva Rama Krishna (deceased) was proceeding on his scooter bearing registration No.AP 37 8450 and when he reached the spot near over bridge down, Eluru, situate nearby to West Godavari Cooperative Marketing Society at about 12 noon, an RTC bus bearing registration No.AEZ 4317 coming from behind driven by respondent No.1 in a rash and negligent manner at high

speed dashed the scooter, due to which, he fell down and he was ran over by the wheels of the bus. He was immediately shifted to the Government Hospital, Eluru, but he was declared dead by the concerned Medical Officer. The petitioners claim that the deceased was working as a Clerk-cum-Cashier in Indian Overseas Bank, earning Rs.7,245/- and also claiming that they were totally dependent on him, sought a compensation of Rs.20,00,000/- from respondent Nos.1 and 2.

5. Respondent No.1 remained *ex parte* before the Tribunal. Respondent No.2 opposed the claim by raising various pleas, which are unnecessary to advert to in this appeal.

6. Basing on the said pleadings, the Tribunal framed the following three issues about the responsibility for the accident:

"(1) Whether the accident occurred due to rash and negligent driving of the bus bearing No.AEZ.4317 driven by the 1<sup>st</sup> respondent ?

(2) Whether, the petitioners are entitled for compensation, if so to what amount and against which of the respondents ?

(3) To what relief ?"

7. During enquiry, petitioner No.1 examined herself as P.W.1 besides examining one Somanchi Venkateswara Rao, an eyewitness to the occurrence, as P.W.2 and Sri S.Amarath, Manager of the Bank, in which the deceased was working at the time of accident, as P.W.3 and marked Exs.A.1 to A.6 to substantiate the claim made by them; whereas, on behalf of the respondents, respondent No.1-driver of the RTC bus examined himself as R.W.1, but no documents were filed.

8. The Tribunal, on an analysis of the evidence on record, let in by both sides, discarding the evidence of R.W.1 and accepting the evidence of P.W.2 and the contents of Ex.A.1-F.I.R., held issue No.1 in favour of the petitioners.

9. Concerning issue No.2, the Tribunal, basing on the evidence of P.W.3 and the contents of Ex.A.6-salary certificate, which reflects

the earnings of the deceased as Rs.13,880-38 ps, deducted amount of Rs.707-07 ps towards H.R.A. and Rs.50/- towards conveyance allowance from the total gross salary of Rs.13,880-38 ps and arrived at Rs.13,123-31 ps per month for the purpose of determining the compensation, however, rounding it off to Rs.13,125/-. The Tribunal has taken the age of the deceased as 36 years as per Ex.A.5-original S.S.C. certificate of the deceased, which reflects the date of birth of the deceased as 12.08.1963, and basing on the Second Schedule to Section 163-A of the Act, applied multiplier '16' and having deducted 1/3<sup>rd</sup> of the income towards personal expenses of the deceased, worked out the loss of dependency at Rs.16,80,000/-. Besides the said amount, the Tribunal has also granted Rs.15,000/- towards loss of consortium, Rs.10,000/- towards loss of estate and Rs.2,000/- towards funeral expenses, and, thus, the Tribunal awarded a total sum of Rs.17,07,000/- towards compensation and apportioned it at Rs.8,67,000/- and Rs.8,40,000/- towards the shares of petitioner Nos.1 and 2 respectively.

10. It is the aforesaid order which is under challenge in the instant appeal filed by respondent No.2-Corporation contending in the grounds that the Tribunal went wrong in holding that respondent No.1 is responsible for the accident overlooking the fact that P.W.2 is not the complainant. It is stated that the Tribunal went wrong in accepting Ex.A.6 without examining the person who issued it and P.W.3 was not competent to depose the contents of Ex.A.6. It is also stated that the Tribunal went wrong in overlooking the fact of petitioners mentioning the monthly earnings at Rs.7,245/- and accepting salary of Rs.13,880/- contained in Ex.A.6. Lastly, it is stated that the Tribunal ought not to have applied multiplier provided under the Second Schedule of Section 163-A of the Act as the claim was laid under Section 166 of the Act. Hence, sought to set aside the award and decree passed by the Tribunal.

11. The instant appeal was preferred in the year 2004 and obtained stay of execution of award and decree having deposited half of the amount of compensation including costs and interest.

Despite the same, there is no representation on behalf of the appellant-Corporation and also on behalf of respondent Nos.1 and 2, who are claimants. In the grounds of appeal, it is endorsed that respondent No.3 herein-driver of the RTC bus is not a necessary party, who is respondent No.1 in the original petition.

12. Perused the award and the evidence let in by the parties, both, oral and documentary. It is not in dispute that the crime was registered against respondent No.1-driver of the RTC bus by the Station House Officer, Traffic Police Station, Eluru for the offences punishable under Sections 304-A and 279 IPC. When the charge sheet was laid against respondent No.1 on completion of investigation, the report of the Motor Vehicle Inspector marked as Ex.A.2 also favours only the case of the petitioners. When the evidence of R.W.1 is perused, in his cross-examination, he categorically admitted that the police filed charge sheet against him and he was shown as accused in the Calendar Case No.764 of 1999 on the file of the Judicial Magistrate of First Class, Eluru. Though, he attempted to wriggle himself out of the accusations levelled against him in Ex.A.1-F.I.R. and the charge sheet by asserting to certain aspects, but he was unsuccessful. On the other hand, the evidence of P.W.2, an eyewitness to the occurrence, shows that he is shown as third witness on behalf of the prosecution as L.W.3 in the copy of charge sheet marked as Ex.A.4. Nothing is brought out in his cross-examination to reject his evidence as to his witnessing the occurrence and the assertions as to the rash and negligent driving of respondent No.1 in occasioning the accident. Further, the very fact that the RTC bus driven by respondent No.1 came from behind and hit the scooter reflects the rash and negligent driving on his part. Therefore, the Tribunal was right in holding issue No.1 in favour of the petitioners and against the respondents.

13. Touching the compensation awarded by the Tribunal, Ex.A.5-original SSC certificate shows the name of the deceased and his date of birth as 12.08.1963, and, thus, he was 36 years old by the date of accident, which took place on 31.08.1999. Thus, the finding of

the Tribunal that the deceased was aged 36 years as on the date of accident, cannot be faulted.

14. Concerning earnings of the deceased, the petitioners filed Ex.A.6 issued on 09.05.2002 by the then Branch Manager showing the gross salary of the deceased as Clerk-cum-Cashier as Rs.13,880-38 ps and basic pay as Rs.9,360/- for the month of August, 1999 and the other allowances have also been shown. The Tribunal has rightly excluded Rs.707/- towards H.R.A. and Rs.50/- towards conveyance allowance. One of the grounds agitated by the appellant-Corporation is that the petitioners have shown the monthly earnings at Rs.7,245/- and that the Tribunal was not right in accepting the amount shown as Rs.13,880/- in Ex.A.6. But that ground appears to be incorrect for the reason that in the claim petition, the petitioners have shown the gross salary as Rs.12,510/- per month, whereas the net salary as Rs.7,045/- per month. It cannot be disputed that it is settled law that for determination of compensation, it is not the carry home salary that has to be construed, but the gross salary by excluding statutory deductions. Therefore, the Tribunal has not committed any error in accepting the contents of Ex.A.6 and arriving at Rs.13,125/- as monthly earnings. Since the claimants are numbering two, 1/3<sup>rd</sup> deduction towards personal expenses applied by the Tribunal cannot also be faulted. It is no doubt true, the Tribunal has taken the multiplier '16' provided in the Second Schedule to Section 163-A of the Act and as per the decision of the Apex Court in **Sarla Verma & others v. Delhi Transport Corporation and another**, the relevant multiplier would be '15' for the age group of persons between 36 and 40 years, but however, as seen from the order under challenge, the Tribunal has not resorted to granting any amount towards future prospects. Therefore, the compensation awarded by the Tribunal cannot be termed as excessive. There is absolutely no merit in the instant appeal.

15. The instant appeal is, therefore, dismissed. In case, any

appeal is preferred by respondent Nos.1 and 2 herein, who are claimants, seeking enhancement, the same would be dealt with independently without referring to the observations made herein. There shall be no order as to costs.

16. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand disposed of.

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**A. SHANKAR NARAYANA, J**

23<sup>rd</sup> November, 2015

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