HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No. 2039 of 2006
and
Cross Objections (SR) No. 44209 of 2007

COMMON JUDGMENT:

The respondent – Andhra Pradesh State Road Transport Corporation, in MVOP No. 182 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Tirupati, preferred the instant appeal aggrieved by the order, dated 02.06.2006, whereby and whereunder, an amount of Rs.7,50,000/- was granted with interest at 7.5% p.a., as compensation.

2. Simultaneously, the respondents in the appeal, who were the petitioners in the original petition, preferred Cross Objections seeking enhancement of compensation.

3. For convenience sake, the parties are hereinafter referred to as they were arrayed before the Tribunal in the Original Petition.

4. The facts, in brief, are that on 06.11.2002 at about 2.30 PM, one C.H. Bharathi, wife of the first petitioner and mother of the petitioners 2 and 3, working as Headmistress in MPP School, Chokkamadugu village of S.R. Puram Mandal, was waiting at the bus stage of Chokkamadugu village, at which time, APSRTC bus bearing registration No.AP-10Z-2896 came from Puttur to proceed to Chittoor, driven in a rash and negligent

manner by its driver and, since he was unable to control the vehicle, it came to the extreme left side and dashed the stone board indicating the village name and hit the deceased and went ahead and stopped at some distance. The said Bharathi sustained multiple injuries and she was shifted to Dr. Somasekhar Hospital, Pallipattu and from there she was shifted to SVRRGG Hospital, Tirupati and she succumbed to injuries while undergoing treatment two days after. The Station House Officer, Police Station S.R. Puram, also registered a case in Crime No. 36 of 2002, under Section 304-A IPC, against the driver of the RTC bus. The petitioners, projecting that the deceased was 38 years old on the date of accident, earning Rs.7,002/- as monthly salary and contributing the entire amount for sustenance of the family, laid claim under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), seeking a sum of Rs.12,00,000/- as compensation.

5. The respondent – APSRTC opposed the claim raising various pleas disowning the rash and negligent driving on the part of the RTC bus driver and finally sought to dismiss the claim petition.

6. The Tribunal framed three issues about the responsibility for the accident. During enquiry, the first petitioner, besides examining himself as PW.1, also examined PWs.2 to 5 and marked Exs.A1 to A15. On behalf of the respondent, the driver of the RTC bus, G. Babu was examined as RW.1 and no documents were filed.

7. The Tribunal, on appraisal of evidence, more particularly,

the evidence of PW.2, an eye witness to the occurrence supported by documentary evidence through Ex.A1 – certified copy of FIR, Ex.A2 – certified copy of inquest report and Ex.A4 – certified copy of charge sheet, held that due to rash and negligent driving of RW.1 the accident had occurred discarding the evidence of RW.1 and, thus, held issue No.1 in favour of the petitioners.

8. On issue No.2, taking into consideration the evidence of PW.3 – Mandal Education Officer, who has issued salary certificate, Ex.A5 showing the gross salary of Rs.7000/- in the time scale of pay of Rs.3950 – 8150/- and relevant documents exhibited by him having noted the deductions, fixed the monthly earnings at Rs.6900/- and worked out the earnings per annum at Rs.82,800/-, deducted 1/3rd there from towards her personal expenses and arrived the contribution at Rs.55,200/- and applied multiplier '13' and worked out the loss of dependency at Rs.7,17,600/-, besides granting Rs.10,000/- towards compensation for expectation of life, Rs.2400/- towards damage to clothing and funeral expenses, Rs.10,000/- towards loss of love and affection to minor petitioners and Rs.10,000/- towards loss of consortium to the first petitioner. Thus, a total sum of Rs.7,50,000/- was awarded with interest at 7.5% p.a.

9. It is the aforementioned order which is under challenge in the instant appeal contending in the grounds of appeal that the Tribunal, despite the evidence of RW.1, wrongly held that there was negligence on the part of RW.1 without appreciating the evidence on record and even the Tribunal ignored the

contributory negligence on the part of the deceased as she has suddenly and negligently crossed the road without observing the RTC bus. It is also stated that the Tribunal was wrong in taking the net salary as per the judgment of the Hon'ble Apex Court in **Asha v. United India Insurance Company Limited**[1], that the Tribunal also applied multiplier '13' instead of multiplier '12', as per the judgment of the Hon'ble Apex Court in **Tamilnadu State Transport Corporation Limited v. S. Rajapriya**[2] and, therefore, sought to set aside the order and decree passed by the Tribunal.

10. In the cross objections (SR) No.44209 of 2007, the petitioners contend that the Tribunal ought to have considered the income of the deceased as Rs.7002/- per month instead of Rs.6,900/- per month and 1/3rd deduction ought not to have been made as the deceased is a Government servant and the Tribunal failed to consider the future prospects of the deceased and, therefore, sought to grant balance amount of Rs.4,50,000/- as the claim was for Rs.12,00,000/-.

11. Heard Sri Aravala Rama Rao, learned Standing Counsel for the appellant - APSRTC, and Sri A. Chandraiah Naidu, learned counsel for respondents 1 to 3.

12. Perused the order and the evidence let in by the petitioners and so also the evidence let in by the respondent – Corporation through RW.1.

13. The Tribunal held issue No.1 in favour of the petitioners

holding that there was rash and negligent driving on the part of RW.1 which occasioned the accident. A perusal of the evidence of RW.1 reflects that there is nothing in his evidence to disown the rash and negligent driving on his part when examined in the light of Exs.A1 to A4, more particularly, the copy of inquest report - Ex.A2 and the copy of charge sheet - Ex.A4. Therefore, the finding recorded by the Tribunal on issue No.1 cannot be faulted with and does not warrant any interference.

14. On issue No.2, the Tribunal, basing on the evidence of PW.3 and contents of Ex.A5 - salary certificate, finding that the gross salary was Rs.7002/- being drawn by the deceased on the date of accident, somehow, taken Rs.6900/- as the earnings after statutory deductions, without giving any details or assigning any reasons, only Rs.102/- was deducted. In fact, Ex.A5 would reflect total deductions at Rs.1050/-, however, the amount of Rs.750/- towards PF loan cannot be deducted since it was a temporary loan. Therefore, an amount of Rs.350/- has to be deducted from the gross salary of Rs.7002/-. When the same is done, it works out to Rs.6652/- and rounding it off to Rs.6600/- and adding 40% which works out to Rs.2,640/- as per the decisions of the Hon'ble Apex Court in **Sarla Verma v. Delhi Transport Corporation**[3]**,** and in **Rajesh and others v. Rajbir Singh and others**[4], towards future prospects as the deceased was running 41st year on the date of accident as her date of birth as borne out from her service register – Ex.A11, reflects that she was born on 09.01.1962 and, thus, her monthly earnings work out to Rs.9240/- and annual earnings at

Rs.1,10,880/-. Since the dependents are numbering '3', as per the decision of the Hon'ble Apex Court in **Sarla Verma's** case (supra) deduction at 1/3rd is permissible, which works out to Rs.36,960/- and remainder being Rs.73,920/- has to be considered as contribution to the family. Since she was running 41st year on the date of accident, the relevant multiplier is '14' as per the decision of the Hon'ble Apex Court in **Sarla Verma's** case (supra). Therefore, when multiplier '14' is applied the loss of dependency works out to Rs.10,34,880/-. The Tribunal has granted conventional sums of Rs.10,000/- towards compensation for expectation of life, Rs.2400/- towards damage to clothing and funeral expenses, Rs.10,000/- towards loss of love and affection to minor petitioners at Rs.5,000/- each and Rs.10,000/- towards loss of consortium to the first petitioner, totaling to Rs.32,400/-, which are hereby confirmed. Thus, the petitioners are totally entitled to Rs.10,67,280/- (Rs.10,34,880/- + Rs.32,400/-). The interest at 7.5% granted by the Tribunal is maintained on the entire amount of compensation from the date of petition till realization.

15. In view of the foregoing discussion, the appeal in MACMA stands dismissed and the cross objections are partly allowed enhancing the compensation awarded by the Tribunal from Rs.7,50,000/- to Rs.10,67,280/- with interest at 7.5% p.a., from the date of petition till realization.

16. As a sequel thereto, miscellaneous applications, if any, pending in this appeal shall stand closed.

A. SHANKAR NARAYANA, J

Date: 18.03.2015.
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[1] 2004 ACJ 448 SC

[2] JT 2005 (4) SC 531

[3] (2009) 6 SCC 121

[4] 2013 ACJ 1403 = 2013(4) ALT 35