

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.968 of 2005

JUDGMENT:

The Andhra Pradesh State Road Transport Corporation (for short, 'the Corporation'), who is respondent No.2 in M.O.P.No.370 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Visakhapatnam (for short, 'the Tribunal'), is the present appellant. Aggrieved by the order dated 29.09.2003, passed by the Tribunal granting Rs.7,35,000/- as compensation for the death of one Rakshit Gupta (hereinafter will be referred to as 'the deceased'), son of the petitioners in the original petition, as against the claim of Rs.12,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), the instant appeal is preferred.

2. The appellant herein is the petitioner, while the respondent Nos.1 and 2, who are the owner and insurer of the accident vehicle respectively, were respondents in the original petition.

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

4. The facts in brief are that the said Rakshit Gupta, who was 27 years old and working as an Officer Trainee in Hindustan Petroleum Corporation Limited, earning Rs.8,400/- per month, on 03.08.1997 started on his Yamaha motorcycle bearing registration No.AP 31J 5365 from Anakapalle towards Visakhapatnam to attend to his duties. Though, he was driving his vehicle on extreme left side of the road, when reached Jalagalamadum junction on National Highway No.5, an RTC bus bearing registration No.AP 9Z 6886 driven in a rash and negligent manner at high speed, came on wrong side of the road and dashed the motorcycle, due to which, he sustained serious injuries and he succumbed to the same. The Station House Officer, Anakapalle Town Police Station, also registered a crime against the driver of the RTC bus. The petitioners claiming that the deceased was their only son and sole bread earner of the family, lost their total dependency, and, had he survived there would have ample opportunities to secure several promotions during his long service, and, therefore, sought a sum of Rs.12,00,000/- as compensation under

special damages and general damages mentioning relevant details.

5. The order under challenge would reflect that the petition was dismissed against respondent No.1 on 23.02.2002. Respondent No.2 filed counter opposing the claim attributing rash and negligent driving of the deceased himself. Further adding that the owner and insurer of the motorcycle, on which the deceased was proceeding, are also necessary parties, and, their non-joinder makes the claim bad, while contending that the compensation claimed is highly excessive, sought to dismiss the petition.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner examined himself as P.W.1 besides examining two more witnesses as P.Ws.2 and 3 and marked Exs.A.1 to A.7 and also Ex.X.1 by summoning the same and marking it through P.W.3 in order to substantiate their claim; whereas, on behalf of the respondents, respondent No.1 stepped into the box and examined himself as R.W.1 and no other documents were filed.

7. The Tribunal, on appraisal of evidence of P.W.1 and R.W.1 supported by Exs.A.1 to A.3, which are attested copies of F.I.R., Motor Vehicle Inspector's report and charge sheet respectively, held issue No.1 in favour of the petitioners. On issue No.2, the Tribunal, placing reliance on the decisions in **Smt. Kaushnuma Begum and others vs. New India Assurance Company Limited** and **U.P.S.R.T.C. and others vs. Trilok Chandra and others**, taking the age of the younger parent of the deceased at 48 years, applied multiplier '15'. Concerning the monthly earnings of the deceased, though, the petitioners have shown the earnings of the deceased at Rs.8,400/- per month basing on the evidence of P.W.2, who is the superior employee of the deceased, worked out the contribution to the family at Rs.48,000/- per annum and applying the multiplier '15', arrived the amount at Rs.7,20,000/- towards loss of dependency and also granted conventional amount of Rs.15,000/- towards loss of estate, and, thus, a total sum of Rs.7,35,000/- was awarded as compensation with relevant directions.

8. Aggrieved of the aforesaid order, the instant appeal is preferred contending in the grounds of appeal that the Tribunal went wrong in appreciating the evidence of R.W.1 and holding that R.W.1 was responsible for taking place of the accident. It is also stated that the Tribunal without proof of evidence, taken the age of the mother of

the deceased as 48 years and applied multiplier '15' despite the fact that relevant multiplier for the age group of persons 48 years was 8.76. It is also stated that the Tribunal was wrong in deciding the dependency at Rs.4,000/- and the deceased was drawing Rs.8,400/- towards stipend as an Office Trainee, and, therefore, sought to set aside the order or to modify the same.

9. Heard Sri Y.Vivekananda Swamy, learned Standing Counsel for the appellant (Corporation). No representation for respondent Nos.1 and 2. It is mentioned in the cause title of the grounds of appeal that respondent No.3 is not a necessary party. In fact, respondent No.3 was the driver of the RTC bus and even before the Tribunal, the claim petition was dismissed against respondent No.3 who was incidentally respondent No.1 in the claim petition.

10. So far as the first ground, agitated by the appellant that there was negligence on the part of the deceased himself, is concerned, a perusal of the evidence of P.W.2 would show that the RTC bus driver who is R.W.1 has taken the bus towards right side without leaving enough space for the motorcycle for passage which assertion stood un-rebutted since nothing is brought out in his cross-examination to disbelieve his evidence. On the other hand, the evidence of R.W.1 is of any assistance and what was asserted by him in his chief-examination was not found in the pleas put forth by the respondent No.2 in the counter. Therefore, the finding recorded by the Tribunal that due to rash and negligent driving of the RTC bus driver, since based on appreciation of evidence, does not warrant interference.

11. The next ground, that the Tribunal went wrong in taking multiplier '15' and the relevant multiplier was '8.76' for the persons aged 48 years is concerned, the learned counsel for the appellant-Corporation placed reliance on the decision of this Court in **Bhagwandas v. Mohd. Arif**. Even otherwise, a perusal of evidence of P.W.3 and also the observation made by the Tribunal basing on the evidence of P.W.3 would clearly show that the deceased was in fact appointed as Officer Trainee and Ex.A.7 letter of appointment issued by the concerned authority proves that the deceased had joined as Officer Trainee on 12.08.1996 and he was due for absorption from 12.08.1997, but unfortunately, the accident had occurred prior to that date, i.e., on 03.08.1997. It is no doubt true, it was elicited in his cross-examination, the absorption was not automatic, but it was dependent upon the performance. However, the said answer is of any assistance to advance the case of the Corporation.

12. Now turning to the income of the deceased, P.W.3's evidence would show that the deceased would have drawn basic with Rs.5,000/- under old scales and would have drawn the gross salary of Rs.10,000/- per month since the salaries of the employees were revised from 01.01.1997 and as per the revised scales, the salary of the deceased would have been Rs.15,000/- and odd. As stated above, the Tribunal while observing that the contribution would be Rs.4,000/- to Rs.5,000/- and the stipend was Rs.8,400/- per month, which the deceased was drawing, still, the Tribunal has taken the amount of Rs.4,000/- towards contribution. Thus, the amount of Rs.4,000/- per month was not even half of the stipend he was drawing, but it was just nearer to half of the monthly earnings. Thus, viewed from any angle, there appears to be no infirmity in recording the finding that the deceased was contributing Rs.4,000/- per month warranting any interference.

13. Now coming to the multiplier, the stand taken by the learned counsel for the appellant is that relevant multiplier is '8.76' and the Tribunal ought to have applied the said multiplier as against '15' applied by the Tribunal. In fact, the relevant multiplier ought to have taken basing on the age of the deceased since he was an earning member in view of the decision of the Hon'ble Apex Court in **Amrit Bhanu Shali and others v. National Insurance Company Limited and others**. Thus, viewed in that angle, the amount of compensation determined by the Tribunal and also dependency arrived by the Tribunal at Rs.7,20,000/- cannot be construed or viewed as excessive or arbitrary. On the other hand, it is just and reasonable compensation determined by the Tribunal and even towards conventional amount, only Rs.15,000/- was awarded, and, thus, the order of the Tribunal does not suffer from any infirmity warranting interference.

14. However, concerning the interest, the Tribunal has granted interest at 9% per annum from the date of petition till realization. In view of the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**, the interest is reduced from 9% to 7.5% on the amount granted by the Tribunal from the date of petition till realization.

15. In the result, the appeal is allowed in part and the order and decree dated 29.09.2003, passed by the Tribunal in M.O.P.No.370 of 2001 is modified only to the extent of interest, reducing it from 9% to 7.5% per annum on the amount of compensation granted by the Tribunal, and in all other respects, the same is

confirmed. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

06th March, 2015

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