

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.137 of 2009

JUDGMENT:

Aggrieved by the Award dated 11.06.2007 in M.V.O.P.No.722 of 2004 passed by the Chairman, Motor Accident Claims Tribunal-cum-IV Additional District Judge, Kadapa (for short 'the Tribunal'), the respondent-APSRTC preferred the instant MACMA.

2 a) The factual matrix of the case is thus:

On 17-11-2004 at 12 noon the deceased—K. Bhadraiah and his friend—N. Sambasiva Naidu were going to Galiveedu from Euguvagottiveedu Village on a Hero Honda motor cycle and when they reached near Eguvagottiveedu Harijanawada, an APSRTC bus bearing No.AP 10Z 9444 being driven by its driver in a rash and negligent manner came in opposite direction and dashed against the motor cycle. In the resultant accident, they received multiple grievous injuries all over the body. Thereafter the deceased—Bhadraiah died while shifting to Government hospital. It is averred that due to rash and negligent driving of the driver of APSRTC bus, the accident occurred. With these averments, the claimants, who are wife, children and parents of the deceased, filed M.V.O.P.No.722 of 2004 under Sec.166 of Motor Vehicles Act, 1988 (for short "M.V.Act") against respondent/APSRTC and claimed Rs.5,00,000/- as compensation.

b) The respondent opposed the OP denying all the material allegations made in the claim petition and urged to put the claimants in strict proof of the same. It contended that there was no fault of the bus driver and on this ground, it denied its liability. It contended that the claim is highly excessive and untenable.

c) During trial, PWs.1 and 2 were examined and Exs.A1 to A7 were marked on behalf of claimants. On behalf of respondent, none were examined and no documents were marked.

d) The Tribunal, on appreciation of oral and documentary evidence, awarded a sum of Rs.4,77,300/- with proportionate costs and interest at 7.5% p.a. against respondent under different heads as follows:

Loss of Dependency	Rs.4,60,800-00
Loss of Consortium	Rs. 05,000-00
Loss of Love and Affection	Rs. 05,000-00
Loss of Estate	Rs. 2,500-00
Funeral Expenses	Rs. 2,000-00
Transportation Charges	Rs. 2,000-00

Total	Rs.4,77,300-00

Hence the appeal.

3. The parties in the appeal are referred to as they stood before the Tribunal.

4. Heard arguments of Sri Aravala Rama Rao, learned counsel for Appellant/APSRTC and Sri V.R. Reddy Kovvuri, learned counsel for respondents.

5) Fulminating the Award, the learned counsel for appellant, firstly argued that the Tribunal on erroneous appreciation of facts and evidence held as if the driver was responsible for the accident though in fact he was not responsible for the accident.

b) Secondly, he argued that the compensation awarded by the Tribunal on different heads is excessive and untenable. Pointing out the same, the learned counsel submitted that the Tribunal without there being any proper evidence took the annual income of the deceased as Rs.3,600/ and thereby compensation for loss of dependency was highly escalated.

c) Thirdly, he argued that the Tribunal erroneously selected '16" as multiplier. The deceased was in the age group of 35 to 40 years and as per the decision reported in **Smt.Sarla Varma vs. Delhi Transport Corporation**^[1], the correct multiplier will be "15".

He, thus, prayed to allow the appeal in the light of the above arguments.

6) Per contra, the learned counsel for respondents/claimants while supporting the Award, firstly argued that the Tribunal rightly fixed the liability on the bus driver taking into consideration the eye- witness account of PW.2 and the said finding is perfectly right.

b) Secondly, he argued that the compensation awarded under different heads was in fact a low one and does not commensurate in terms of the recent decisions of the Hon'ble Supreme Court and therefore, the compensation may not be further reduced. Expatiating it, the learned counsel argued that the Tribunal awarded a low income of Rs.2000/- towards funeral expenses and Rs.5000/- towards loss of consortium, though as per the decision reported in ***Rajesh and others vs. Rajbir Singh and others***^[2], the claimants are entitled to Rs.1,00,000/- towards loss of consortium and Rs.25,000/- towards funeral expenses. He, thus, submitted that in view of the fact that compensation under other heads was already drastically reduced, the same may not be further decreased by applying "15" as multiplier, as prayed for by the other side. He, thus, prayed to dismiss the appeal.

7) In the light of above rival arguments, the point for determination is:

"Whether the award passed by the Tribunal is factually and legally sustainable?"

8) **POINT:** The fact relating to the accident such as the deceased along with his friend proceeding on Hero Honda Motor cycle from Eguvagottiveedu Village to Galiveedu on 17-11-2014 at 12.00 noon and on the way when they reached near Eguvagottiveedu Harizanawada, one APSRTC Bus bearing No. AP 10 Z 9444 hitting them is an admitted fact. The fault of the driver of bus is concerned, the claimants examined PW.2, who is an eye-witness to the accident. His version is that he traveled in the bus sitting in the front left side of the driver and witnessed

the manner of occurrence of accident. He deposed that when the motor cycle of the deceased was proceeding towards Galiveedu side and it reached Eguvagottiveedu Harijanawada, the APSRTC Bus came in opposite direction in a rash and negligent manner without observing the road side curve, dashed the motor cycle of the deceased and thereby the deceased and pillion rider fell down and suffered grievous injuries. He asserted that the accident was occurred due to fault of the driver of APSRTC Bus. This witness was extensively cross examined, but no useful material could be elicited to conclude that he has not traveled in the bus and did not witness the accident. It must be noted that as per Ex.A.4—Charge sheet, this witness was cited as LW.1 and after accident, he shifted the injured to Government Hospital, Rayachoti. So, there can be no demur that PW.2 was an eye-witness to the accident. He sat in the front side of the bus besides the driver and witnessed the manner of occurrence of accident and he is a 3rd party and disinterested one. Therefore, there is no reason to believe his evidence. On the other hand, the respondent Corporation has not examined the driver of the bus either to contradict the evidence of PW.2 or to establish that he was not responsible for the accident. In view of this and the fact that the police too after investigation laid charge sheet against the bus driver, it can be safely held that the bus driver was alone responsible for the accident. Therefore, the Tribunal is right to that extent.

9) So far as the compensation is concerned, as per the claimants, the deceased was hale and healthy and he was aged 35 years and he was doing cultivation besides Paddy and Groundnut business and thereby earning Rs.8000/- per month. They produced Exs. A.6 and A.7—Pattadar Passbooks standing in the name of parents of the deceased i.e., claimant Nos. 4 and 6. Exs. A.6 and 7 would show that claimant's family is owning agricultural lands. The Award shows that the Tribunal taking into consideration the fact that the parents of the deceased owned Ac.02.00 cents of land, fixed the average income of the deceased as Rs.3,600/- per month. Having regard to the young age of the deceased

and his avocation i.e., agriculture, the said fixation cannot be found fault.

10) Then selection of multiplier is concerned, the Tribunal having observed that the deceased was in the age group of 35-40 years, fixed the multiplier as “16”. It must be said that the fixation is not correct, in view of the multiplier table rendered by the Apex Court in **Sarla Varma’s** case (1 supra). As per the said table, the correct multiplier for the persons in the age group of ‘36 to 40’ years is “15”. So, when the compensation for loss of dependency is calculated, it comes to Rs.4,32,000/- (Rs.2400 x 12 x 15), instead of Rs.4,60,800/- as arrived at by the Tribunal.

11) Now, coming to the arguments of learned counsel for respondents, in respect of other heads i.e., towards funeral expenses and loss of consortium, the Tribunal has awarded a low compensation and, therefore, the compensation already awarded by the Tribunal may not further be reduced. It should be noted that the claimants have not preferred any independent appeal seeking enhancement of compensation. In these circumstances, having considered the arguments of both sides, the compensation towards loss of dependency is reduced from Rs.4,60,800/- to Rs.4,32,000/-. Thus, the total compensation payable to the claimants under different heads is shown as below:

Loss of Dependency	Rs.4,32,000-00
Loss of Consortium	Rs. 05,000-00
Loss of Love and Affection	Rs. 05,000-00
Loss of Estate	Rs. 2,500-00
Funeral Expenses	Rs. 2,000-00
Transportation Charges	Rs. 2,000-00

Total	Rs.4,48,500-00

Therefore, the compensation is reduced by Rs.28,800/- i.e., from Rs.4,77,300/- to Rs.4,48,500/-.

13) In the result, the appeal is partly allowed and the compensation awarded by the Tribunal is reduced by Rs.28,800/- i.e., from

Rs.4,77,300/- to Rs.4,48,500/-. The appellant Corporation is directed to deposit the compensation amount with interest at 7.5% P.A., within two months from the date of this Judgment, failing which, execution can be taken against it.

(b) No costs in the appeal.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 02.07.2015

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[\[1\]](#) 2009 ACJ 1298 (SC)

[\[2\]](#) (2013) 9 SCC 54