

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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C.M.A.No.2683 of 2004

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JUDGMENT:

The legal representatives of the injured claimant, i.e., the claimants 2 to 6 had filed this Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 ('the Act' for short) assailing the Award dated 01.10.2003 of the learned Chairman, Motor Accidents Claims Tribunal-cum-Additional District Judge, Vizianagaram District passed in OP.No.265 of 2001.

2. I have heard the submissions of the learned counsel for the appellants/claimants 2 to 6 ('the appellants', for brevity) and the learned counsel for the APSRTC/respondents 2 and 3 ('the APSRTC', for brevity). The 1st respondent is the driver of the bus. None appeared despite service of notice on the said respondent.

3. The core facts, in a nutshell, are as follows:

The injured claimant/deceased 1st appellant herein had originally filed the claim petition against the respondents 1 to 3, claiming a compensation of Rs.1,75,000/- *inter alia* alleging that on 19.01.2000, while he was waiting on the far left side of his house having reached near Jammu Narayanapuram village, at about 3.45 PM, the RTC bus bearing Registration No.AP 10Z 2147, being driven by its driver in a rash and negligent manner, dashed against him and that as a result, he had sustained injuries. During the pendency of the claim petition, the injured claimant had died and therefore, his legal representatives, who are appellants herein, were brought on record. The said claim petition was resisted by the respondents 2 and 3. At trial, the 2nd appellant, who is the wife of the deceased injured claimant, an eyewitness and a Doctor were examined as PWs1 to 3 and exhibits A1 to A5 and X1 were marked. On the side of APSRTC the driver was examined as RW1 and no documents were exhibited. On merits, the Tribunal held

that the pleaded accident resulting in injuries to the deceased claimant had occurred due to the rash and negligent driving of the APSRTC bus by its driver-RW1. The Tribunal having held that since the death was not on account of the injuries sustained in the accident and that as the action for damages for the personal injuries will not die with the death of the injured and that as the maxim '*actio personalis moritur cum persona*' has no application when there is loss to the estate of the deceased had awarded a compensation of Rs.15,000/- to the appellants with interest at 9% per annum simple from the date of the petition till the date of payment besides proportionate costs and directed that all the respondents are liable to pay the same to the appellants.

4. Having been aggrieved of the meagre compensation awarded by the Tribunal, the appellants had preferred this appeal.

5. (a) The learned counsel for the appellants would contend that the appellants/claimants 2 to 6 are admittedly the legal heirs/dependants of the deceased and that the Tribunal having held that with the death of the injured the action for damages for personal injuries will not die ought to have seen that the appellants are entitled to just compensation to compensate the loss to the estate of the deceased which includes compensation for loss of earnings of the deceased during the period of treatment, hospitalisation and bed rest and also the expenditure incurred on his treatment, medicines and extra nourishment besides expenses incurred on transportation, attendant etcetera and that therefore, the Tribunal ought to have awarded just and adequate compensation.

5. (b) On the other hand, the learned counsel for the APSRTC would contend that the injured had died even during the pendency of the claim petition and even before any compensation was awarded by the Tribunal and that therefore, no compensation is awardable under the head 'shock, pain and suffering' and also under the head permanent/partial disability and other heads like 'loss of enjoyment of life, loss of amenities of life, loss of pleasures of life' etcetera as the injured claimant had already died and that at best the claimants are only entitled to compensation under the head 'loss of estate' and that in the case on hand, no evidence was adduced and not even medical bills or other bills are filed to show the expenditure incurred on the medicines, treatment etcetera on the deceased injured

claimant and that in the absence of any credible evidence even as to loss of his earnings during the relevant period, the compensation awarded by the Tribunal cannot be said to be a meagre compensation and that since the injured claimant died for others reasons and not on account of the injuries sustained in the accident, the appellants are not entitled to make any claim and that the appeal is devoid of merit.

6. The points that arise for determination in this appeal are:

Whether the compensation awarded to the appellants by the Tribunal is not just, reasonable and fair in the facts and circumstances urged by the claimants? And, if so, what shall be the just, reasonable and fair compensation to be awarded to the claimants in this appeal?

7. POINTS:

7.1 I have given earnest consideration to the facts and the submissions. In **Reliance General Insurance Co. Ltd. V. B.Mallaiah (died) by L.Rs**, this Court had held as follows:

Actio personalis moritur cum persona is a common law maxim. It envisages that a personal right of action dies with the person. The common law principle is that where an injury had been caused to any person or damage was caused to his property, for which recovery of damages would have been the remedy, the action extinguishes with the death of the person wronged or that of the wrongdoer, except as regards the pecuniary loss to the estate of the injured vide *Bhagwati Bai v. Bablu*, 2007 ACJ 682. However, the Supreme Court observed in *Official Liquidator of Supreme Bank Limited v. P.A.Tendolkar*, (1973) 1 SCC 602, that the maxim had no application to actions based on contracts or where the estate of the tort feaser had benefited from a wrongdoer.”

The law is well settled that under the head ‘loss to the estate of the deceased’, damages could be claimed towards pain and suffering, loss of earnings and other damages actually suffered by the victim between the date of the accident and the moment of death and damages towards loss of personal property may be awarded. Damages towards loss of expectation of life may also be awarded if the injuries had an impact on the longevity. In the case on hand, Rs.60,000/- was claimed under the head ‘hospital, medical, extra nourishment and transport expenses’; Rs.1,15,000/-

was claimed towards general damages and Rs.85,000/- and Rs.30,000/- are respectively claimed towards 'loss of earnings due to permanent disability' and 'pain and suffering'. As per the evidence on record and the contents of exhibit A2-the copy of wound certificate, the deceased-injured claimant had received seven injuries out of which injuries nos.2 and 6 are grievous in nature. As per exhibit X1-case sheet of KGH Hospital, he had received inpatient treatment from 19.01.2000 to 24.02.2000. PW1 had testified that her husband used to work as a rickshaw puller and earn Rs.50/- per day prior to the accident and that he had died about an year prior to her giving evidence before the Tribunal and that her husband could not do any work after the accident and that he had spent Rs.60,000/- for medicines and treatment. Further, as per the testimony of PW3-the medical officer attached to the Government Hospital, Vizianagaram, the fractures sustained by the injured claimant were corrected by operations at KGH. PW3 had further deposed that the injured/1st appellant cannot do hard work because of the injuries and that he cannot do his work as in the past. Exhibit A2, the certified copy of the wound certificate on a perusal would show that the injured-deceased claimant had sustained the following injuries:

1. Lacerated injury on right elbow 'L' shaped 12X3 cm Red in colour
2. Swelling & deformity over right upper arm
3. Abrasion on left side of forehead 5 X 1 cm Red in colour
4. Lacerated injury posterior aspect of right thigh 5 X 2 cm red in colour
5. Lacerated injury over left hand between thumb & index finger measuring 3 X2 cm
6. Abrasion of right ankle ½ X ½ cm
7. Contusion right side of the Head (Temporal region) 3 X 5 cm

There is no evidence on record that he had suffered permanent disability. NO medical bills or other documentary evidence is produced to show the expenses incurred on medicines, transport etcetera.

7.2 The fact remains that the injured had sustained two fracture injuries and the fractures were corrected by performing operations. It is also borne out by record that

he was treated as an inpatient for about a month. Even simple injuries take a minimum of two to three weeks time for complete healing. Major injuries like fractures take a time of one or two months generally for healing and a further time of 1 or 2 months is generally required for physiotherapy and getting normal movements of the limb. Since the injured had suffered two fractures, it is reasonable to believe that one person at least should have attended upon him during the period of treatment, hospitalisation and bed rest. It is common knowledge that patients taking treatment even in a Government Hospital incur expenditure on medicines purchased from outside, transport, attendant, extra nourishment etcetera. Considering the evidence on record, Rs.15,000/- is awarded under the head ‘hospital, medical, transport, attendant, extra nourishment and other expenses’ instead of Rs.10,000/- awarded by the Tribunal . He was a rickshaw puller according to the evidence on record. PW1 affirmed that he used to earn Rs.50/- per day and had denied the suggestion that he was getting only Rs.20/- per day. She had also deposed that her husband could not attend to his rickshaw pulling work till his death on account of injuries sustained in the accident. In her testimony given before the Tribunal on 04.07.2003 she had stated that her husband died about one year back. She and other appellants were brought on record even by February 2003. The accident in this case had occurred on 19.01.2000. Therefore and considering the nature of the work he used to do, it is reasonable to accept that he was out of work for about eighteen months. Therefore, a sum of Rs.27,000/- can be awarded under the head ‘loss of earnings’, which is a loss to the estate. Rs.5,000/- awarded under ‘general damages’ by the Tribunal can also be confirmed.

7.3 Accordingly, the claimants are entitled to the following compensation amounts:

Sl.No.	Head of compensation	Amount(in Rs.)
(1)	Hospital, medical, extra nourishment, attendants' transport and incidental charges	15,000-00
(2)	Loss of earnings	27,000-00
(3)	General damages	5,000-00
Total		47,000-00

(Rupees Forty Seven Thousands only)

7.4 In the facts and circumstances of the case, the claimants are not entitled to any other compensation amounts. The rest of the claim is disallowed. Thus, as per the determination supra, the just and fair compensation to which the claimants are

entitled to is Rs.47,000/-. The said compensation is accordingly awarded. The points are accordingly answered.

7.5. Coming to the rate of interest on the enhanced portion of the compensation, it is just and fair to award interest at the rate of 7.5% per annum simple on the said enhanced compensation amount. On the compensation already awarded, the Tribunal granted interest @ 9% per annum simple.

8. In the result, the appeal is allowed in part with proportionate costs awarding a total compensation of Rs.47,000/- (Rupees Forty Seven Thousands only). Having regard to the facts and circumstances, the insurance company is directed to pay by way of demand draft in favour of the 2nd appellant/2nd claimant the enhanced portion of compensation i.e., Rs.32,000/- (Rupees Thirty Two Thousands only) with interest at 7.5% per annum simple from the date of the original petition till the date of payment and also proportionate costs or deposit the same before the Tribunal within two months from the date of the receipt of a copy of this judgment. The already awarded compensation or any portion thereof, if not already paid or deposited as per the award of the Tribunal, the same may also be paid or deposited accordingly. In case of deposit of the said sums before the Tribunal, the claimants are entitled to receive the same in equal shares without furnishing any security.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

M. SEETHARAMA MURTI, J

01st May 2015

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