THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

M.A.C.M.A.Nos.2320 of 2008 and 756 of 2009

COMMON JUDGMENT:

As these two appeals are directed against the order dated 29.02.2008 passed in M.V.O.P.No.242 of 2006 on the file of the Motor Accident Claims Tribunal (II Additional District Judge), Ongole, they are being disposed of by this common judgment.

M.A.C.M.A.No.2320 of 2008 is filed by the claimants seeking enhancement of the compensation while M.A.C.M.A.No.756 of 2009 is filed by the Andhra Pradesh State Road Transport Corporation (hereinafter referred to as "the Corporation"), challenging the award.

Heard the learned counsel for the appellants, the learned counsel for the respondents and perused the material available on record.

For the sake of convenience, the parties will hereinafter be referred to as arrayed before the Tribunal.

The facts in issue are as under:

The claimants, who are the parents, wife, minor daughter and mother of one Velpula Venkateswarlu (hereinafter referred to as "the deceased"), initially filed a petition under Section 166 of the Motor Vehicles Act and later changed to Section 163-A of the Motor Vehicles Act (for Short "the Act"), claiming compensation of Rs.7,00,000/- for the death of the deceased in a road accident that took place on 12.01.2006 at about 1.30 a.m. The averments in the petition would disclose that on intervening night of 11/12.01.2006, the deceased boarded an RTC bus bearing No. AP 11 Z 2916 at Hyderabad to go to his village. When the bus reached Sangaram bus stage on Hyderabad-Sagar road, two buses and lorries were stopped at that place. The bus in which the deceased was traveling stopped ahead of those buses. The deceased got down from the bus while all the passengers and drivers also got down and they were talking with each other. At that time an RTC bus bearing No. AP 27 V 2333 driven by its driver in a rash and negligent manner came from behind and dashed the back side of bus bearing No. AP 11 Z 2916, which in turn hit the passengers who were in front of that bus. As a result of which, the deceased and others sustained injuries. Immediately, all the injured were shifted to hospital, but on the way to the hospital, the deceased succumbed to injuries. Since the accident took place due to the negligence of the driver of the bus bearing No. AP 27 V 2333 and as the respondent Nos.1 and 2 are the owner and insurer of the said bus and respondent Nos.3 and 4 are managing the bus in which the deceased was traveling from Hyderabad, all the respondents were jointly and severally made liable to pay the compensation.

The first respondent remained *ex parte.* The second respondent filed counter denying the manner in which the accident took place. The second respondent also disputed the age, income and avocation of the deceased. It is contended that the accident occurred only due to the negligent driving by the driver of the RTC bus and as such the Corporation alone is liable to pay the compensation. In any event it is stated that the compensation claimed by the claimants is highly excessive and exorbitant.

The fourth respondent filed written statement which was adopted by the third respondent. It is stated in the counter that at the time of accident, the bus was not running and the same was stationed due to some un-avoidable circumstances. The accident occurred due to negligent driving of the driver of the bus bearing No. AP 27 V 2333 and as such the Corporation is not liable to pay any compensation.

Basing on the above pleadings, the Tribunal framed the following issues:

1. Whether on 12.01.2006 at about 1.30 a.m. near Sangaram Bus Stage on Nagarjuna Sagar-Hyderabad, the driver of the bus bearing No. AP 27 V 2333 drove his vehicle in a rash and negligent manner and thereby caused the accident resulting in the death of Sri Velpula Venkateswarlu?

2. Whether respondent Nos.3 and 4 are liable to pay compensation?

3. Whether the petitioners are entitled to any compensation? If so, at what amount and from whom?

4. To what relief?

In support of the case, the claimants examined PWs.1 and 2 and got marked Exs.A-1 to A-5. On behalf of the respondents, no oral evidence was adduced but Ex.B1-insurance policy was marked.

After considering the oral and documentary evidence available on record, the Tribunal awarded compensation of Rs.3,64,572/-with proportionate costs and interest at 7.5% p.a. from the date of petition till the date of realization, payable by respondent Nos.1 to 4 jointly and severally. Aggrieved by the same, these appeals are filed.

The main argument of the learned counsel for the Corporation is that the incident did not happen due to rashness or negligence of the driver of the RTC bus and that the bus was not running at the time of accident. According to him the accident was occurred only due to negligence on the part of the driver of bus bearing No. AP 27 T 2333 and as such the Corporation is not liable to pay compensation.

On the other hand, the learned counsel for the claimants would contend that no independent evidence was adduced by the Corporation to show that the accident occurred on account of the negligence or rashness of the driver of the Bus bearing No. AP 27 T 2333. He also contended that the compensation awarded by the Tribunal is on lower side and the same needs to be enhanced.

The first question that falls for consideration is whether the accident took place due to the rash and negligent driving of the driver of the Bus bearing No. AP 27 T 2333 or driver of the RTC bus.

In order to appreciate the said contention, it would be necessary to refer to the evidence available on record. The police filed charge sheet against drivers of both the buses, which was taken on file as C.C.No.384 of 2006 on the file of the Judicial Magistrate of First Class, Miryalguda. In the charge sheet it was alleged that accused No.1 ie. Driver of the bus bearing No.AP 27 V 2333 drove the bus in a rash and negligent manner and dashed the bus bearing No. AP 11 Z 5077 from the rear side, as a result of which the stationed bus bearing AP 11 Z 5077 of accused No.2 went ahead and dashed the deceased. The Corporation as well as the insurance company did not examine the drivers of both the buses. In the absence of any evidence being adduced by the Corporation and by the insurance company, the finding of the tribunal with regard to the manner in which the accident took place namely holding the drivers of both the bus guilty cannot be found fault with. Apart from that the claimants filed an application under Section 163-A of the Act. In view of Section 163-A of the Act, the claimants need not prove the negligence of the drivers of the vehicles on the date of the accident. Therefore, the Corporation cannot escape from the liability to pay compensation.

The next question that would fall for consideration is the quantum of compensation which the claimants are entitled, PW.1 in her evidence stated that the deceased used to attend mason work and earn Rs.5,000/- per month, but no document was filed to prove the earnings of the deceased. But, one cannot expect PW.1 to file documentary evidence to prove the income of the deceased, who was a mason. The only way of testing the evidence of PW.1 is to see whether there was any corroboration from other quarters. The Inquest report which is placed on record as Ex.A2 show that the deceased was working as mason. When the evidence on record established that the deceased was working as a mason, a reasonable amount can be fixed as his income but there is no evidence of his earnings.

In ***Sarla Verma v. Delhi Transport Corporation*** in para No.34 the Apex Court held as under:

> "Where the application is under Section 163-A of the Act, it is possible to calculate the compensation on the structured formula basis, even where the compensation is not specified with reference to the annual income of the deceased, or is more than Rs.40,000/-."

In view of the judgment referred to above, the annual income of the deceased can be taken as Rs.40,000/-.

At this stage, the learned Standing Counsel for the Corporation submits that the deceased being a mason cannot be treated as a skilled person and the claim-petition is filed under Section 163-A of the Act, the claimants are not entitled for future prospects.

In R.K. MALIK V. KIRAN PAL the Apex Court while dealing with an application under Section 163-A of the Act held as under:

> “In cases of motor accidents the endeavour is to put the dependents/claimants in the pre-accidental position. Compensation in cases of motor accidents, as in other matters, is paid for reparation of damages. The damages so awarded should be adequate sum of money that would put the party, who has suffered, in the same position if he had not suffered on account of the wrong. Compensation is therefore required to be paid for prospective pecuniary loss i.e. future loss of income/dependency suffered on account of the wrongful act.However, no amount of compensation can restore the lost limb or the experience of pain and suffering due to loss of life. Loss of a child, life or a limb can never be eliminated or ameliorated completely. To put it simply-pecuniary damages cannot replace a human life or limb lost. Therefore, in addition to the pecuniary losses, the law recognises that payment should also be made for non pecuniary losses on account of, loss of happiness, pain, suffering and expectancy of life etc. The Act provides for payment of "just compensation" vide section 166 and 168. It is left to the courts to decide what would be "just compensation" in facts of a case.
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> For calculating the yearly loss of dependency the starting point is the wages being earned by the deceased, less his personal and living expenses. This provides a basic figure. Thereafter, effect is given to the future prospects of the deceased, inflation and general price rise that erodes value and the purchasing power of money. To the multiplicand so calculated, multiplier is to be applied. The multiplier is decided and determined on the basis of length of dependency, which must be estimated. This has to be necessarily discounted for contingencies and uncertainties.”

Further, the issue as to whether a mason is entitled for future prospects came up for consideration before the Apex Court in ***Santosh Devi*** **v. National Insurance Company Limited and others.** In para Nos.14 and 18 of the said judgment the Apex Court held as under:

> “It is extremely difficult to fathom any rationale for the observation made in paragraph 24 of the judgment in Sarla Verma v. Delhi Transport Corporation case that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. In our view, it will be naïve to say that the wages or total emoluments/income of a person who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same

throughout his life. The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families. The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the deceased employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lakh. Although, the wages/income of those employed in unorganized sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour. **So will be the cases of ordinary skilled and unskilled labour, like, barber, blacksmith, cobbler, mason etc.** Therefore, we do not think that while making the observations in the last three lines of paragraph 24 of Sarla Verma's judgment, the Court had intended to lay down an absolute rule that there will be no addition in the income of a person who is self-employed or who is paid fixed wages. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30 per cent increase in his total income over a period of time and if he / she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation."

In ***Rajesh v. Rajbir Singh*** the Apex Court held as under:

"Since the Court in Santosh Devi's case, actually intended to follow the principle in the case of salaries persons as laid down in Sarla Verma's case and to make it applicable also to self-employed and persons on fixed wages, it is clarified that the increase in the case of those groups is not 30% always; it will also have a reference to the

> age. In other words, in the case of self-employed or persons with fixed wages, in case the deceased victim was below 40 years, there must be an addition of 50% to the actual income of the deceased while computing future prospects. Needless to say that the actual income should be income after paying the tax, if any. Addition should be 30% in case the deceased was in the age group of 40 to 50 years."

From the judgments of the Apex Court referred to above it is clear that a mason if he is aged below 40 years would be entitled to an addition of 50% of his income to his income for computing the future prospects even though the application is filed under Section 163-A of the Act. After considering the evidence available on record, the Tribunal held that the deceased was aged about 28 years at the time of the accident. Since the petition was filed under Section 163-A of the Motor Vehicles Act the suitable multiplier as per second schedule would be '18'. As stated earlier, if the income of the deceased is fixed at Rs.40,000/- per annum and if 50% of the income is added to the actual income of the deceased towards future prospects the total income of the deceased would be Rs.60,000/- per annum. After deducting 1/3rd amount towards his personal and living expenses, the contribution of the deceased would be Rs.40,000/- per annum. Applying multiplier '18' the total loss of dependency would be Rs.40,000/- x 18 = Rs.7,20,000/-. The tribunal also awarded a sum of Rs.2,500/- towards loss of estate and Rs.2,000/- towards funeral expenses which warrant no interference but however failed to award any amount towards loss of consortium. Since the application filed under Section 163-A of the Motor Vehicles Act the claimants are entitled to Rs.5,000/- towards loss of consortium. Thus, in all the claimants are entitled to Rs.7,29,500/-.

In view of the above discussion, M.A.C.M.A.No.2320 of 2008 is allowed in part by enhancing the compensation from Rs.3,64,572/- to Rs.7,29,500/- while M.A.C.M.A.No.756 of 2009 is dismissed. The enhanced amount shall carry interest at 6% p.a. from the date of petition till the date of realisation. The claimants would be entitled to the compensation awarded only after payment of deficit court fee. There shall be no order as to costs.

The miscellaneous petitions, if any pending, shall stand closed.

C. PRAVEEN KUMAR, J

18.08.2015

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