

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

M.A.C.M.A.Nos. 2107 of 2005 and 145 of 2006

COMMON JUDGMENT:

These two appeals are being disposed of by this common order, as they arise out of same accident.

MACMA No.2107 of 2005 was filed by the respondent in O.P.No.400 of 2002 on the file of the Motor Accident Claims Tribunal-cum-IV Additional District Judge, Tirupati, (for short 'the Tribunal'), whereas MACMA No.145 of 2006 was filed by the petitioners in the said O.P.

The claim petition was filed by the petitioners seeking a compensation of Rs.10,00,000/- for the death of husband of the 1st petitioner and father of the petitioners 2 and 3 in a motor accident that occurred on 18.02.2002. While the husband of the 1st petitioner was proceeding to his lands on a bicycle and when he reached mile stone center on Gollapudi high way road, Vijayawada, the driver of APSRTC bus bearing No.AP 10Z 4100 drove the bus in a rash and negligent manner at high speed and the bus dashed the cyclist on his backside, as a result of which, he fell down and sustained bleeding injuries all over his body. Initially, he was admitted in Government Hospital. Later on, he was shifted to Charithasri Hospital, Vijayawada for better treatment. He underwent several surgeries and ultimately succumbed to the injuries on 09.03.2002 during the course of treatment. He was aged about 48 years and was earning Rs.1,50,000/- per annum on agriculture.

The respondent filed a counter stating that the cyclist suddenly crossed the road from right side to left side without observing the traffic rules, and in spite of the driver of the bus

applying sudden brake, the cyclist lost control and dashed the front portion of the bus. Thus, there is contributory negligence on the part of the cyclist.

On the basis of the said pleadings, the following issues were framed:

- 1) *Whether the deceased V.Bujjeswara Rao died due to rash and negligent driving of the driver of APSRTC bus bearing registration No.AP 10Z 4100?*
- 2) *Whether the petitioner is entitled for compensation as prayed for in the petition?*
- 3) *To what relief?*

P.Ws.1 to 5 were examined and Exs.A.1 to A.13 were marked on behalf of the petitioners. On behalf of the respondent, R.W.1 was examined, but no documentary evidence was adduced.

The Tribunal, on the basis of the oral and documentary evidence, came to the conclusion that the accident occurred due to rash and negligent driving of the APSRTC bus.

With regard to the compensation, the Tribunal noticed that the deceased was an agriculturist and accordingly assessed the income as Rs.48,000/- p.a. After deducting 1/3rd thereof, applying the multiplier of 11, it arrived the loss of estate at Rs.3,52,000/-. On the basis of the evidence in Exs.A.7 and A.8, an amount of Rs.2,08,000/- was awarded towards medical expenses. Besides the said amounts, an amount of Rs.10,000/- was awarded towards damage to cycle and attendant charges, Rs.10,000/- towards pain and suffering and Rs.10,000/- towards love and affection to the petitioners 2 and 3. Thus, an amount of Rs.6,00,000/- was awarded by award dated 21.04.2005. As stated above, seeking enhancement of the said compensation, the petitioners filed

MACMA No.145 of 2006, whereas the respondent filed MACMA No.2107 of 2005 challenging the award of compensation mainly raising the ground of contributory negligence.

In view of the evidence on record, the Tribunal came to the conclusion that the accident occurred due to rash and negligent driving of the bus bearing No.AP 10Z 4100. The record before this Court does not assist the case of the respondent for coming to a different conclusion. In the circumstances, the appeal preferred by the respondent in MACMA No.2107 of 2005 fails.

The petitioners filed MACMA No.145 of 2006 challenging the quantum of compensation.

With regard to the claim of the petitioners seeking enhancement of the compensation, the admitted facts are that the deceased was aged about 48 years and was an agriculturist. There is no conclusive evidence with regard to the agricultural income earned by the deceased. In those circumstances only, the Tribunal took the annual contribution of the deceased to the family at Rs.32,000/- and the said amount need not be varied. However, the learned counsel for the petitioners submitted that as per **Sarla Verma v Delhi Transport Corporation**^[1], the appropriate multiplier is 13. If the same is applied, the total compensation comes to Rs.4,16,000/-. The Tribunal ought not to have awarded any amount towards pain and suffering in a case of death. However, when the Tribunal has not awarded any amount towards funeral expenses, the said amount of Rs.10,000/- is converted to funeral expenses. The Tribunal awarded an amount of Rs.10,000/- towards damage to cycle and attendant charges and the said amount is disallowed. The amount of Rs.10,000/- awarded towards

loss of consortium is enhanced to Rs.50,000/-, the amount of Rs.10,000/- awarded towards loss of love and affection is enhanced to Rs.20,000/- and the amount of Rs.2,08,000/- awarded by the Tribunal towards medical expenses is retained. Thus, the total compensation that is payable to the petitioners is Rs.7,04,000/- and the enhanced amount of compensation shall carry interest at 9% p.a. from the date of petition till the date of realization.

Accordingly, MACMA No. 2107 of 2005 is dismissed and MACMA No.145 of 2006 is partly allowed. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any, pending in the appeals shall stand dismissed.

(A.RAMALINGESWARA RAO, J)

16th December, 2015
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[\[1\]](#) 2009 ACJ 1298.