## HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

**M.A.C.M.A. No.830 of 2010**

**JUDGMENT:**

Aggrieved by the Award dated 18.01.2010 in O.P.No.1280 of 2007 passed by the Chairman, M.A.C.T-cum-Principal District Judge, R.R.District at L.B.Nagar, Hyderabad (for short 'the Tribunal'), the claimants preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The first claimant is the husband and claimants 2 to 4 are children of the deceased—Kummari Laxmi. Their case is that on 13.08.2007 when the first claimant and deceased were travelling in a APSRTC bus bearing No.AP 10 Z 7388 from Dundigal to Pandubasti of Jeedimetla after attending the coolie work, the driver of the bus drove the same in a rash and negligent manner and at high speed and did not alight at Sai Baba Nagar cross roads where they had to get down. Therefore, they requested the conductor to stop the vehicle at Saibabanagar bus stop and the conductor accordingly asked the driver to stop the bus, but the driver shouting on them applied sudden brakes and thereby, the deceased fell down from the bus and suffered severe head injury. Immediately she was shifted to Sai Bhavani Hospital, Shapur Nagar and while undergoing treatment she died on 09.09.2007. It is averred that accident was occurred due to rash and negligent driving by the driver of bus. On these pleas, the claimants filed O.P.No.1280 of 2007 under

Section 166 of Motor Vehicles Act, 1988 (for short “the Act”) against respondents—APSRTC and claimed Rs.7,50,000/- as compensation.

b) The respondent/APSRTC filed written statement denying all the material averments made in the claim petition and urged to put the claimants to strict proof of the same. They contended that deceased never travelled in the bus. It further contended that compensation is highly excessive and exorbitant.

c) During trial, PWs.1 to 3 were examined and Exs.A1 to A7 were marked on behalf of claimants. No oral or documentary evidence was adduced on behalf of respondent.

d) The Tribunal on appreciation of both oral and documentary evidence awarded Rs.2,03,200/- as compensation against respondent with proportionate costs and interest @ 7.5% p.a. under different heads as below:

| | |
|---|---|
| Loss of earnings | Rs. 1,63,200-00 |
| Loss of consortium | Rs. 8,000-00 |
| Loss of estate | Rs. 8,000-00 |
| Funeral expenses | Rs. 2,000-00 |
| Transportation charges | Rs. 2,000-00 |
| Medical expenses | Rs. 20,000-00 |
| Total | Rs. 2,03,200-00 |

Hence, the appeal by claimants.

3) The parties in the appeal are referred as they were arrayed before the lower Tribunal.

4) Heard arguments of Sri K.Jagathpal Reddy, learned counsel for appellants/claimants and Sri N.Vasudeva Reddy, learned Standing Counsel for APSRTC/respondent.

5) The appellants/claimants filed M.A.C.M.A M.P.No.1339 of 2005 to amend their claim from Rs.7,50,000/- to Rs.15,00,000/- which was allowed by this Court on 09.07.2015 directing the appellants/claimants to pay the additional court fee.

6) Learned counsel for appellant firstly argued that the Tribunal rightly held that bus driver was responsible for the accident as the respondent—Corporation has not examined the bus driver or the conductor to show that the bus driver was not responsible for the accident and that the deceased herself was at fault as she tried to alight from the moving bus. Therefore, the finding of the Tribunal on issue No.1 to the effect that the bus driver was at fault can be upheld.

a) Nextly, learned counsel vehemently argued that compensation awarded by the Tribunal is low and inadequate. Expatiating it, he firstly argued the Tribunal awarded a very low amount of Rs.20,000/- towards medical expenses in spite of the fact that the claimants incurred medical expenditure of Rs.3,87,986/-. He submitted that PW2—doctor and PW3—billing manager have deposed about the medical expenditure but still the Tribunal on an erroneous appreciation of facts and evidence awarded Rs.20,000/-.

b) Secondly, he argued that Tribunal awarded a low amount of

Rs.1,63,200/- towards loss of earnings. He submitted that deceased was a coolie and in fact at the time of accident herself and her husband were returning after attending coolie work and as such the Tribunal ought to have taken her earnings as Rs.3,000/- per month as claimed but it took only Rs.1,200/- as her monthly income. Further, the Tribunal did not take into consideration the future prospects of the deceased. He relied upon the decision reported in ***Rajesh vs. Rajbir Singh***[1] to stress the need to take the future prospects into consideration. He also submitted that the Tribunal ought to have deducted 1/4th instead of 1/3rd from the gross earnings of the deceased following the decision of Apex Court in ***Sarla Verma vs. Delhi Transport Corporation***[2] because of the fact that the number of her dependants is ‘4’.

c) Thirdly, he argued that the Tribunal awarded low compensation for the conventional items such as loss of consortium and funeral expenses. He again relied upon the decision in ***Rajesh***’s case(1 supra) to point out that compensation under those heads shall be granted as per the said decision.

d) Finally, he submitted that interest should have been granted @ 9% p.a. In this regard, he relied upon the decision reported in ***Smt.Neeta W/o. Kallapa Kadolkar and others vs. The Divisional Manager, MSRTC, Kolhapur***[3].

He submitted that in view of the above shortcomings, the compensation was drastically reduced. He thus prayed to allow the appeal and enhance the compensation suitably.

7 a) Per contra, while opposing the appeal learned standing counsel for APSRTC/ respondent argued that though the claimants pleaded to have incurred medical expenditure of Rs.3,87,986/-, they did not produce cogent evidence. PW.3—the Billing Manager admitted that they have not mentioned in Ex.A.7—medical bill that the hospital has received the amount covered by the said bill. Due to this and failure on the part of PW.2 to adduce any evidence in proof of his claim that he borrowed loans to meet the medical expenditure, the Tribunal rightly rejected their claim and awarded a reasonable amount of Rs.20,000/-.

b) Nextly, commenting on the compensation for loss of earnings of the deceased, he argued that there was no proper evidence that the deceased was earning Rs.3,000/- and so the Tribunal rightly fixed her earnings as Rs.1200/- p.m and accordingly computed the compensation. Regarding the claim of the appellants that the $1/4^{th}$ instead of $1/3^{rd}$ should have been deducted from the gross earnings, learned counsel argued that first claimant is not her dependant and so the Tribunal rightly deducted $1/3^{rd}$.

c) Finally, with regard to the compensation on conventional items, learned counsel cited the decision of Apex Court in ***Ramilaben Chinubhai Parmar and others vs. National***

***Insurance Company and others***[4] and argued that in that case a Full Bench of Apex Court awarded Rs.50,000/- for conventional items and urged to follow the same. He further submitted that the Tribunal rightly awarded interest @ 7.5% p.a and there is no need to revise the same. He thus prayed to dismiss the appeal.

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

"*Whether the compensation awarded by the Tribunal is just and reasonable or needs interference?*"

9) **POINT:** The accident, involvement of the RTC bus bearing No.AP 10 Z 7388 and death of deceased are not in dispute. It may be noted that the Tribunal having regard to the evidence available on record has come to the conclusion that the bus driver was responsible for the accident. The said finding arrived at by the Tribunal in issue No.1 of its judgment was not challenged by the respondent/Corporation and in fact it did not file any appeal. The present appeal is filed by the claimants for enhancement of compensation. So the said finding which has attained finality, need not be discussed again in this appeal. The bone of contention in this appeal is only the quantum of compensation.

10) The first argument of the appellants is that the Tribunal erred in awarding only Rs.20,000/- towards medical expenditure though the claimants incurred a heavy expenditure of

Rs.3,87,986/-. In this context, a perusal of Ex.A.7—bills would show that the claimants produced a bunch of medical bills issued by the Sri Bhavani Super Specialty Hospital where the deceased was treated. As per the claimants, the medical expenditure covered by those bills is Rs.3,87,986/-. The claimants examined PW.2—Casualty Medical Officer (C.M.O) and PW.3—the Billing Manager. PW.2 spoke about the admission and treatment and death of deceased but he did not depose about the Ex.A.7—medical bills. He only stated that the patient by name Smt. Laxmi was admitted on 13.08.2007 with head injury and Sub-Dural Hemorrhage (S.D.H) for which she was treated till 09.09.2007, on which date she died. So his evidence is not helpful to decide the veracity of medical expenditure. Then PW.3—the Billing Manager of Sri Bhavani Hospital stated that Ex.A.7—medical bills pertain to their hospital. In the cross examination he stated that an amount of Rs.60,000/- was granted under Chief Minister Relief Fund (C.M.R.F). He admitted that in Ex.A.7, it was nowhere mentioned that the amount of Rs.3,87,986/- was received from the patient. Having regard to it and the failure on the part of PW.1 to produce any supporting evidence in proof of his stand that he raised loans from several of his relatives to meet the medical expenditure, the Tribunal awarded only Rs.20,000/- towards medical expenditure. The same is now criticized by the claimants. It is true that the claimants did not produce any supporting evidence to show that he borrowed amount from his relatives to meet the medical expenditure. However, that is not the ground to grant only Rs.20,000/- towards medical expenditure. It should not be forgotten that the deceased suffered head injury with Sub-Dural Hemorrhage, for which she was treated for considerable period i.e, from 13.08.2007 to 09.09.2007. In these circumstances, though for want of proper proof, the entire amount of Rs.3,87,986/- cannot be admitted, still a reasonable amount has to be granted towards medical expenditure. Having regard to the facts that the deceased suffered grievous injuries and was treated for considerable period in a private hospital, the medical expenditure is enhanced from Rs.20,000/- to **Rs.50,000/-**.

11) Then the loss of earnings of the deceased is concerned, the Tribunal approving that the deceased was a coolie, fixed her monthly earnings at Rs.1200/-. This fixation is challenged by the appellants contending that the deceased was a young lady and attending coolie works along with her husband and earning considerable amount. Ex.A.3—inquest report shows that the deceased was 26 years old and she was a labourer. Thus, it is clear that she was young and able bodied person and attending coolie work. In fact as per Ex.A.1—FIR, the deceased along with her husband was returning from coolie work in the crime bus and met with accident. Considering her age and occupation and her death in the year 2007, her monthly income is fixed at Rs.1500/- and another sum of Rs.750/- (50%) is added towards future prospects by following the decision of ***Rajesh***'s case (1 supra). Thus her annual income comes to Rs.27,000/- (Rs.2,250/- x 12).

The Tribunal deducted $1/3^{rd}$ towards her personal and living expenditure. The contention of the appellants is that $1/4^{th}$ is to be deducted since number of dependants is '4'. This argument cannot be accepted for the reason that though the number of claimants is '4', the first claimant who is the husband, cannot be taken as her dependant because he is earning income by doing coolie work. So deducting $1/3^{rd}$, the net annual contribution of the deceased comes to Rs.18,000/- (Rs.27,000/- x $2/3^{rd}$). Multiplier is concerned, following the decision of ***Sarla Verma***'s case (2 supra), the Tribunal rightly selected '17'. So the loss of earnings of the deceased comes to **Rs.3,06,000/-** (Rs.18,000/- x 17).

12) Then the conventional amounts are concerned, in the ***Ramilaben Chinubhai Parmar***'s case (4 supra), a Full Bench of Hon'ble Supreme Court awarded Rs.50,000/-. Hence following the said decision, the compensation for conventional items i.e, loss of consortium, loss of estate and funeral expenses is awarded at **Rs.50,000/-**.

13) Then the rate of interest is concerned, the Full Bench in ***Ramilaben Chinubhai Parmar***'s case (4 supra) awarded interest @ 7.5% p.a. Hence, the said rate awarded by the Tribunal is approved. Thus, the total compensation payable to the claimants under different heads is detailed as below:

| | |
|---|---|
| Loss of earnings | Rs.3,06,000-00 |
| Conventional items (loss of consortium, loss of estate and funeral expenses) | Rs. 50,000-00 |

| | |
|---|---|
| Transportation charges | Rs. 2,000-00 |
| Medical expenses | Rs. 50,000-00 |
| | -------------------- |
| Total | Rs.4,08,000-00 |
| | -------------------- |

Thus the compensation is enhanced by Rs.2,04,800/- Rs.4,08,000/- minus Rs.2,03,200/-)

14) In the result, this M.A.C.M.A. is partly allowed and ordered as follows:

a) The compensation awarded by the Tribunal is enhanced by Rs.2,04,800/- with proportionate costs and interest @ 7.5% per annum from the date of OP till the date of realization; and

b) Respondents in the OP are directed to deposit the compensation amount within two (2) months from the date of this judgment, failing which execution can be taken out against them.

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

**U. DURGA PRASAD RAO, J**

Date: 30.10.2015
murthy/scs

[1] (2013) 9 SCC 54

[2] 2009 ACJ 1298 (SC) = AIR 2009 SC 3104

[3] 2015 (1) TAC 340

[4] 2014 Law Suit (SC) 340