

OHON'BLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No. 433 of 2009

JUDGMENT:

Aggrieved by the Award dated 10.03.2005 in O.P.No. 209 of 2002 passed by the IV Additional District and Sessions Judge, Fast Track Court, Ranga Reddy District at L.B. Nagar, claimants filed the instant MACMA.

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

The deceased Shaik Muneer was aged 25 years and working as Lathe Machine Operator in Alpha Engineering Company. On 3.1.2002 when he was proceeding on his scooter bearing No. AP 28 3777 from Narsapur cross road and when he reached near IDPL Factory, Balanagar at about 9.30 AM, a RTC bus baring No. AP9Z 7787, which was driven by its driver in a rash and negligent manner, came behind and dashed the scooter causing his instantaneous death. It is averred that the bus driver was at fault in the accident. It is further averred that the claimants, who are the widowed mother and brother of the deceased became destitutes on the death of the deceased. On these pleas, they filed MVOP No. 209 of 2002 under Section 166 of the Motor Vehicles Act and claimed Rs. 3,00,000/- as compensation against APSRTC, who is the owner of the offending bus.

b) The respondent filed counter denying its liability on the main plea that there was no fault of the bus driver and the accident was occurred due to the fault of the deceased himself as the deceased and another scooterist while overtaking each other came behind the bus and the deceased fell down and suffered injuries and died.

c) During trial, PWs 1 to 3 were examined and Exs A1 to A4 were marked on behalf of the claimants and on behalf of respondents, bus driver was examined as RW-1.

3) The Tribunal, on appreciation of facts and evidence, has awarded Rs. 2,04,200/- as compensation with costs and interest at 9% per annum from the date of petition till the date of realization.

4) Hence, the appeal by the claimants questioning the quantum of compensation as inadequate and low.

5) Heard Sri B. Parameswara Rao, learned counsel appearing for appellants and Sri N. Vasudeva Reddy, learned counsel appearing for respondent No. 2.

6a) Challenging the quantum of compensation as too low and inadequate, learned counsel for appellant firstly argued that despite the clear evidence of PW-3 regarding the employment of the deceased as Lathe Machine Operator and his income as Rs. 3,000/- per month, the Tribunal erroneously fixed his income as Rs.1800/- and thereby

compensation was drastically reduced.

b) Secondly, he argued that the Tribunal has not taken into consideration the future prospects of the deceased for fixing his income and therefore, the future prospects shall also be taken into consideration.

c) Thirdly, the learned counsel argued that the Tribunal instead of taking the age of the deceased, took his mother's age for selection of multiplier. He submitted that as per the latest judgment of Division Bench of this Court reported in **N. Surender Rao Vs. B. Swamy**^[1], the age of the deceased has to be taken into consideration.

d) Fourthly, he argued that the Tribunal awarded low amount of Rs. 2,000/- towards funeral expenses and it should be increased. He thus, prayed to allow the appeal and enhance the compensation suitably.

7a) Per contra, opposing the appeal, learned counsel for the respondent-APSRTC argued that in fact the Tribunal ought to have dismissed the OP holding that the accident was occurred due to the fault of the deceased himself. He vehemently argued that as per the evidence of RW-1/driver of the bus, the accident was occurred due to the fault of the deceased himself but the Tribunal without appreciating his evidence in proper perspective, erroneously held as if the accident was occurred due to the fault of RW-1.

b) Secondly, he argued that the compensation awarded under different heads is just and reasonable and there is no need to revise the same. In this process, he submitted that except the oral evidence of PW-3 there is no documentary evidence to show that the deceased was working as Lathe Machine Operator and earning Rs. 3,000/- per month and therefore, the Tribunal rightly fixed his notional income as Rs. 1800/- per month and accordingly, computed the compensation and there was no fault in such assessment. He thus prayed for dismissal of the appeal.

8) In the light of the above arguments, the point for determination in this appeal is:

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

9) **POINT:** The accident, involvement of the bus and the death of the deceased are not in dispute. So far as the fault of driver is concerned, the Tribunal under Issue No. 1, has held that the bus driver was responsible for the accident. It should be noted that the RTC has not filed any appeal challenging this finding. Therefore, in this appeal, which is filed by the claimants questioning the quantum of compensation, the RTC cannot challenge the said finding. Even otherwise also, the finding of the Tribunal cannot be carped because PW-2, who is the Police Constable in Balangar Police Station and who was on duty on the date of

accident, reported the matter to Police of Balanagar Police Station. He deposed that when he was in front of IDPL Factory, he saw the deceased coming on the scooter from Narsapur cross roads towards BHEL and at that time the RTC bus came in the same direction and dashed the scooter in front of the IDPL Factory and at that time the bus was driven in a rash and negligent manner. He denied the suggestion that the accident occurred when the scooterist was overtaking the bus and the bus did not hit him. So the independent evidence of PW-2 amply demonstrates that the bus driver was at fault. So the Tribunal rightly held that the bus driver was responsible for the accident.

10) Then coming to the quantum of compensation, the Tribunal did not accept the evidence of PW-3 regarding the employment and earnings of the deceased. So it fixed the notional income of the deceased at Rs. 1800/- and accordingly computed the compensation. The same is now challenged.

11) On a conspectus of the material on record, this Court is of the opinion that the compensation needs reassessment so far as the income of the deceased is concerned. Occupation of deceased is concerned, no doubt PW-3 deposed that the deceased worked as Lathe Machine Operator in his concern i.e., Alpha Engineering Works and he was paid Rs. 100/- per day. However, no record was produced to show that the deceased was being paid Rs.

100/- per day. So, except oral evidence of PW-3 no record produced. However, in Ex. A-4 -charge sheet, it was mentioned that the deceased was a Lathe Machine Operator. As such, it can be believed that the deceased was a skilled worker. Though his income cannot be accepted as Rs. 3,000/- per month as stated by PW-3 for want of documentary proof, still his monthly income can be taken as Rs. 1,800/- as fixed by the Tribunal. As rightly pointed out by the learned counsel for the appellant, the Tribunal did not take into consideration the future prospects. Therefore, a sum of Rs. 500/- is added towards future prospects making the monthly income of the deceased as Rs. 2,300/.

12) So far as the selection of multiplier is concerned, in the case of ***N. Surender Rao V. B. Swamy***^[2], a Division Bench of this Court held that when the deceased was a bachelor, his age has to be taken for selection of multiplier. Following the same, the age of the deceased is taken for selection of multiplier. The deceased was aged about 25 years as per Ex. A2 inquest report and Ex. A3 Post Mortem Report. For this age, multiplier 18 is provided by the Supreme Court in the case of ***Smt. Sarla Verma v. Delhi Transport Corporation***^[3]. In the same decision the Apex Court held that 50% has to be deducted towards personal and living expenses of the deceased when he was a bachelor. So, following the said decision, 50% is deducted

towards personal expenses and balance is taken towards contribution to the family of the deceased, which comes to Rs. 13,800/- ($2,300 \times 12 \times 50 / 100 = 13,800$). By multiplying the amount with multiplier 18, we will arrive at the loss of dependency, which comes to Rs. 2,48,400/- ($13,800 \times 18 = 2,48,400$). The said amount is awarded towards loss of dependency.

13) So far as the funeral expenses are concerned, the Tribunal awarded Rs. 2,000/- and the said amount is enhanced to Rs. 25,000/- as prescribed by the Apex Court in the case of ***Rajesh v. Rajbir Singh***^[4].

Thus the total compensation payable to the claimants under different heads is detailed as below:

Loss of earnings	Rs. 2,48,400-00
Funeral Expenses	Rs. 25,000-00
Loss of Estate	Rs. 15,000-00

Total	Rs. 2,88,400-00

So at the outset the compensation is enhanced by Rs.84,200/- (Rs.2,88,400/- minus Rs.2,04,200/-)

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

a) Compensation is enhanced by Rs. 84,200/-.

The original compensation of Rs. 2,04,200/- shall carry interest @ 9% per annum whereas

enhanced compensation of Rs. 84,200 shall carry 7.5% per annum from the date of OP till the date of realisation.

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

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

U. DURGA PRASAD RAO, J

Date: 10.07.2015

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[\[1\]](#) 2014 (1) ALT 512

[\[2\]](#) 2014 (1) ALT 512

[\[3\]](#) 2009 ACJ 1298 (SC)

[\[4\]](#) 2013 ACJ 1403 (SC)