

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.1220 OF 2009

JUDGMENT:

1 This appeal is filed under Section 173 of M.V. Act, assailing the judgment and award dated 08.04.2008 passed in M.V.O.P.No.250 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional Chief Judge, City Civil Courts, Secunderabad.

2 For the sake of convenience, parties to this appeal will hereinafter be referred as they are arrayed before the Tribunal.

3 The facts leading to filing of the present appeal, briefly, are as follows:

4 On 29.07.2006, one Venkat Reddy was proceeding to his house from agricultural fields on his motorcycle bearing No. AP 28 AH 3331. When he reached near Gangabavigudem, the driver of the APSRTC bus bearing No. AP 10 Z 7452 drove the bus in a rash and negligent manner and hit the motorcycle of Venkat Reddy from opposite direction. The accident occurred due to the rash and negligent driving of the driver of the bus against whom the Station House Officer, Yadgirigutta registered a case in Cr.No.89 of 2006 under section 304-A IPC. In the said accident, Venkat Reddy (hereinafter referred to as 'the deceased') sustained multiple injuries on various parts of his body and died while undergoing treatment in Osmania Government General hospital, Hyderabad. By the date of accident, the deceased was aged 22 years and used to earn Rs.5,000/- p.m as electrician. The petitioners are parents of the deceased and they are dependents on the income of the deceased. The respondent being the owner of the bus bearing No.AP 10 Z 7452, is vicariously liable for the wrongful acts done by its driver in the course of his employment. Hence the petitioners filed the claim petition seeking compensation of Rs.5.00 lakhs from the respondent.

5 The respondent filed counter denying the material averments made in the petition *inter alia* contending that the accident occurred due to the rash and negligent driving of the motorcycle by the deceased himself and that there was no negligence on the part of the driver of the bus. It is further contended that the amount of compensation claimed by the petitioners under various heads is

highly excessive and exorbitant. Hence the petition may be dismissed.

6 Basing on the above pleadings, the Tribunal framed the following issues for trial:

- i. Whether the accident occurred owing to the rash and negligent driving of vehicle APSRTC Bus bearing No.AP 10 Z 7452?
- ii. Whether the petitioners are entitled for any compensation, if so, to what amount and against whom?
- iii. To what relief?

7 During the course of trial, on behalf of the petitioner P.Ws.1 and 2 were examined and Exs.A.1 to A.9 were marked. On behalf of the respondents, no oral or documentary evidence was let in.

8 Having appreciated the material available on record, the Tribunal arrived at a conclusion that the accident occurred due to rash and negligent driving of driver of the bus bearing No. AP 10 Z 7452, which resulted in the death of the deceased and allowed the petition in part by awarding compensation of Rs.4,82,000/-, directing the respondent to pay the same with interest at 7.5% p.a. from the date of filing of the petition till the date of deposit. Feeling aggrieved by the judgment and award passed by the Tribunal, the respondent filed the present appeal.

9 Heard Sri N.Vasudeva Reddy, the learned counsel for the respondent and Sri S. Raj Kumar, the learned counsel for the petitioners.

10 The contention of the learned counsel for the respondent is two fold viz., 1) The petitioners filed the claim petition under Section 163-A of the M.V. Act, whereas, the Tribunal awarded compensation as if the petition is filed under Section 166 of the M.V. Act., and 2) The amount of compensation awarded by the Tribunal under various heads is on higher side.

11 *Per contra*, the learned counsel for the petitioners submitted that the Tribunal has rightly considered various aspects and awarded just and reasonable compensation. He further submitted that the Tribunal can take the actual income of the deceased even though the petition is filed under Section 163-A of the M.V. Act.

12 Now the point that falls for determination in this appeal is:

“Whether the compensation awarded by the Tribunal is just and reasonable or not?”

Point:

13 As per the finding of the Tribunal that the accident occurred due to the rash and negligent driving by the driver of the bus bearing No. AP 10 Z 7452. The petitioners filed the claim petition under Section 163-A of the M.V. Act, in which case, the petitioners need not plead and prove rash and negligence on the part of the driver of the crime vehicle. However, the respondent is entitled to establish that there was no negligence on the part of the driver of the crime vehicle. For one reason or the other, the respondent did not choose to examine the driver of the bus to prove that there was no negligence on his. Basing on the material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the bus bearing No. AP 10 Z 7452, which resulted in the death of the deceased. I am fully agreeing with the finding recorded by the Tribunal on issue No.1. Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the bus bearing No. AP 10 Z 7452, which resulted in the death of the deceased.

14 As per the averments made in the claim petition and the testimony of P.W.1, her son used to earn Rs.5,000/- p.m. as electrician. The oral testimony of P.W.2 coupled with Ex.A.9 reveals that the deceased was electrician by profession. An electrician is a skilled worker. Taking into consideration the age and avocation of the deceased, the Tribunal has rightly arrived at a conclusion that the deceased may earn Rs.3,500/- p.m. Viewed from any angle, the deceased may earn Rs.3,500/- pm. or Rs.42,000/- p.a.

15 The petitioners have filed the petition under Section 163-A of the M.V. Act. As per the ratio laid down in 1) ***Oriental Insurance Co. Ltd Vs. Hansrajbhai V. Kodala***, 2) ***Deepal Girishbhai Soni Vs. United India Insurance Co. Ltd***, 3) ***Ningamma Vs. United India Insurance Company Limited*** and 4) ***National Insurance Company Limited Vs. Sinitha*** the Tribunal has to determine the loss of dependency basing on the Second Schedule of the Act, regardless of the actual gross income of the deceased. Suffice it to say, the Schedule to

Section 163-A of the Act puts a nail at Rs.40,000/- on the gross annual income, as well as the other non-conventional heads. The Tribunal proceeded on a premise that it can award compensation basing on the actual gross annual income of the deceased dehors the second schedule annexed to Section 163-A of the Act.

16 In the case on hand, the petitioners herein have opted to file the petition under Section 163-A of the Act. As per the principle enunciated in the cases cited supra, if the application is filed under Section 163-A of the M.V. Act, the Tribunal has no option except to determine the compensation taking the aid of second schedule of the Act. Even if the Tribunal comes to a conclusion that the deceased may earn more than Rs.40,000/- p.a., the Tribunal has to restrict the annual gross income of the deceased to Rs.40,000/- only in view of the judgments 1 to 4 of Hon'ble apex Court referred supra.

17 In case of death of unmarried person, the Tribunal has to take the age of father or mother of the deceased, whichever is less to take appropriate multiplier. By the time of death, the mother of the deceased was aged about 40 years and the Tribunal has taken multiplier as 15. As per the second schedule, the appropriate multiplier applicable for the age group of 35 to 40 is '16'. The present petition is filed under Section 163-A of the Act. Therefore, the Tribunal has to apply the appropriate multiplier as mentioned in the Second Schedule only.

18 After considering the material available on record, the Tribunal rightly arrived at a conclusion that the annual income of the deceased comes to Rs.42,000/-. The annual gross income has to be restricted to Rs.40,000/- only in view of second schedule of the Act. Out of the said Rs.40,000/-, 1/3rd has to be deducted towards personal expenses of the deceased. So the contribution of the deceased to the family would come to $40,000/- - 13,333 = Rs.26,667/-$ p.a. Thus the loss of dependency would be $Rs.26,667/- \times 16 = 4,26,672/-$.

19 As per Exs.A.7 and A.8 medical bills, the petitioners spent Rs.1,01,000/- for the treatment of the deceased and the Tribunal awarded that amount. The Tribunal also awarded Rs.2,000/- towards funeral expenses and Rs.1,000/- towards transportation charges. Thus, the amount of compensation awarded is as follows:

Loss of dependency: Rs.4,26,672/-

Medicines: Rs.1,01,000/-

Funeral charges: Rs.2,000/-

Transportation charges: Rs.1,000/-

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TOTAL Rs.5,30,672/-

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20 The claimants did not choose to file any appeal or cross-objections challenging the quantum of compensation, whereas, the respondent filed the appeal challenging the quantum of compensation awarded by the Tribunal.

21 In ***Ranjana Prakash and others v. Divisional Manager, New India Assurance Co. Limited and another***, the Apex Court held that where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High Court is to examine the facts and by applying the relevant principles, determine the just compensation. If the compensation determined by it is higher than the compensation awarded by the Tribunal, the High Court will allow the appeal if it is by the claimants and dismiss the appeal if it is by the owner or insurer.

22 In view of the principle laid down by the Hon'ble Apex Court in the case cited supra, this Court has no power to enhance the compensation in the appeal filed by the insurer. Having regard to the facts and circumstances of the case and also the principle enunciated in Ranjan Prakash case (5 supra), this Court has no other option except to restrict the amount of compensation to Rs.4,82,000/- as awarded by the Tribunal.

23 In the light of the foregoing discussion, the appeal is disposed of. No order as to costs. As a sequel, miscellaneous petitions pending in this appeal, if any, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 21st April, 2015.

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