

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. Nos.809 of 2009 and 496 of 2010

COMMON JUDGMENT:

Both these appeals arise out of the judgment and award dated 05.11.2008 in O.P.No.1869 of 2006 on the file of the Motor Accidents Claims Tribunal-cum-Chief Judge, City Civil Court, Hyderabad. Hence, I am inclined to dispose of these two appeals by the common judgment.

2. The claimants preferred MACMA No.809 of 2009 seeking enhancement of compensation while the respondents preferred MACMA No.496 of 2010 contending that the compensation awarded to the claimants is highly excessive.

3. The parties will be referred to as they were arrayed before the Tribunal in the original petition to avoid confusion.

4. The facts in brief are that on 14.3.2006 at about 7.25 PM, A.Narsing Rao was proceeding on his motor cycle bearing No.AP 10B 9541 from Tarnaka to OU Campus. When he reached near Arts College, the driver of RTC bus bearing No.AP 10Z 6518 had driven the same in a rash and negligent manner and dashed the motor cycle from its behind. The backwheels of the RTC bus ran over the A.Narsing Rao (hereafter referred to as, the deceased) and he died on the spot. By the date of the accident, the deceased was aged about 48 years and used to earn Rs.12,070/- per month towards salary as Senior Assistant in the office of the Deputy Registrar (Establishment), Osmania University, Hyderabad. The Station House Officer, O.U., registered a case in Crime No.84 of 2006 under Section 304-A IPC against the driver of the RTC bus. The first petitioner is wife and petitioner Nos.2 and 3 are sons of the deceased. The petitioners are the dependents on the income of the deceased. Due to sudden death of the deceased, the petitioners have lost source of income. Hence,

the petitioners filed the petition under Section 166 of the Motor Vehicles Act, 1988 claiming a compensation of Rs.18,00,000/- for the death of A.Narsing Rao, with costs and interest.

5. The respondents filed counter denying the material averments in the petition, *inter alia*, contending that the accident occurred only due to the negligence of the deceased and there was no negligence on the part of the driver of the RTC 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:

(1) Whether the accident resulting in death of A.Narsing Rao occurred owing to the rash and negligent driving of the driver of RTC Bus bearing No.AP 10Z 6518?

(2) Whether the petitioners are entitled for compensation and, if so, to what amount and from whom? and

(3) To what relief?

7. During trial before the Tribunal, on behalf of the petitioners, P.Ws.1 to 3 were examined and Exs.A.1 to A.11 were marked. On behalf of the respondents-RTC, R.W.1, the driver of the offending RTC bus, was examined and no document was marked.

8. On appraisal of the evidence, both oral and documentary, let in by both the parties, and also the other 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 RTC bus and awarded an amount of Rs.8,03,000/- towards compensation to the petitioners with interest at 7.5% per annum from the date of the petition till the date of deposit.

9. Sri Jayanthi Surya Chandra Sekhar, learned counsel for the appellants-claimants, submitted that the Tribunal has committed grave error while assessing the income of the deceased. He further submitted that the Tribunal has not applied the correct multiplier while determining the loss of dependency. He also submitted that the Tribunal has awarded meager amounts for loss of consortium and funeral expenses.

10. *Per contra*, Sri N.Vasudeva Reddy, learned Standing Counsel for the respondents-RTC submitted that the finding of the Tribunal on issue No.1. He further submitted that the Tribunal failed to appreciate the oral testimony of R.W.1, the driver of the RTC bus in right perspective. He also submitted that the amount of compensation awarded on various heads is on higher side.

11. Now the points that arise for consideration in this appeal are:

- (1) Whether the accident occurred due to rash and negligent driving of the driver of the RTC bus or not? and
- (2) Whether the amount of compensation awarded by the Tribunal is fair, just and reasonable?

Point No.1:

12. To prove the manner of accident, the first petitioner examined herself as P.W.1 and got marked Exs.A.1 to A.5. To demolish the case of the petitioners, the driver of the offending RTC bus examined as R.W.1.

13. As per the oral testimony of P.W.1, the accident occurred due to rash and negligent driving of the driver of the RTC bus. It is not in dispute that P.W.1 is not eye witness to the accident. As per the testimony of R.W.1, the accident occurred due to rash and negligent driving of the motor cycle by the deceased. P.W.1 and R.W.1 being interested witnesses, the possibility of deposing false to suit their version cannot be ruled out completely. As per the testimony of P.W.2,

the accident occurred due to rash and negligent driving of the driver of the RTC bus. P.W.2 is an independent witness. In the cross-examination of P.W.2, nothing is elicited to shake his testimony so far as the manner of accident is concerned. If large number of persons witnessed the accident, the Police will record the statement of few persons only. Merely because the statement of P.W.2 was not recorded by the Police, by itself is not a sufficient ground to discard his testimony.

14. As per the recitals of Ex.A1 F.I.R., and Ex.A5 charge sheet, the accident occurred due to rash and negligent driving of the driver of the RTC bus. A perusal of Ex.A4 M.V.I.'s report clearly reveals that there was no mechanical defect in the crime bus. It is not in dispute that the back-wheels of the RTC bus ran over the deceased. The accident occurred in O.U. campus. It is the duty of the drivers of four wheelers to take more precaution while driving the vehicle in such areas. It is not in dispute that the bus hit the motor cycle from its behind. This clearly indicates the rashness and negligence on the part of the driver of the RTC bus. If the driver of the RTC bus has taken reasonable care, the accident might not have occurred. Even assuming, but not admitting, that there is negligence on the part of the rider of motor cycle, what prevented the driver of the RTC bus to lodge complaint to the Police narrating the manner of accident? For the reasons best known, R.W.1 did not lodge complaint to the Police. This aspect also lends support to the version of petitioners. It is the duty of the Tribunal or court to take into consideration the manner of accident so as to ascertain at whose fault the accident occurred. As observed earlier, back-wheels of the bus ran over the deceased. This itself clearly establishes the manner of accident.

15. In order to get acquittal in the criminal case registered against the driver of the RTC bus, the possibility of distortion of the facts before the Tribunal cannot be ruled out completely. The oral testimony of P.Ws.1

and 2 is fully supported by the recitals of Exs.A1, A4 and A5, F.I.R., M.V.I's report and charge sheet respectively so far as the manner of accident is concerned.

16. A perusal of Ex.A2 inquest panchanama and Ex.A3 post-mortem report clinchingly establishes that the deceased died due to the injuries sustained in a road accident. The material placed before the Tribunal falls short to establish negligence, much less contributory negligence, on the part of the deceased. The Tribunal meticulously scrutinized the oral evidence as well as the documentary evidence available on record and arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the RTC bus. There are no grounds much less valid grounds to upset the finding of the Tribunal so far as the manner of the accident and the factum of the death of deceased are concerned. In the light of the foregoing discussion, I am unable to accept the contention of learned counsel for the respondents-RTC that the deceased also responsible for the accident.

17. Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to rash and negligent driving of the driver of the RTC bus which resulted in death of A.Narsing Rao. Accordingly, this point is answered in favour of the claimants and against the RTC.

Point NO.2:

18. Learned counsel for the claimants submitted that the amount of compensation awarded is on lower side. The contention of the learned counsel for the RTC is that the quantum of compensation awarded is on higher side. Let me consider the material available on record, in the light of the submissions made by the learned counsel for both the parties.

19. As per the recitals of Ex.A7, Matriculation certificate, the

deceased was born on 14.11.1957. Thus the age of the deceased by the date of accident is 49 years. The Tribunal has applied the multiplier '8'. As per the decision of **Sarla Verma v Delhi Transport Corporation**^[1], proper multiplier that would be applicable for the age group of 46 – 50 years is '13'. Therefore, it has to be held that the Tribunal has not applied the correct multiplier.

20. As per the testimony of P.W.1, her husband was working as Senior Assistant in Osmania University and drawing a salary of Rs.12,070/- per month at the time of accident. Ex.A10 is the salary certificate and Ex.A11 is revised salary certificate of the deceased. To prove the income of the deceased, the petitioner has mainly placed reliance on the testimony of P.W.3, who is also working as Senior Assistant in the office of the Deputy Registrar (Establishment), Osmania University, Hyderabad. Ex.A6 is the identity card of the deceased. Ex.A9 is the pay slip. By examining P.W.3, the petitioners have proved the recitals of Exs.A7, A9, A10 and A11. Being an University employee, there is no need to P.W.3 to depose false. The gross salary of the deceased is Rs.12,070/-. As per the revised pay-scales, the gross salary of the deceased is Rs.15,000/- per month. It is a known fact that the Tribunal or court has to deduct some amount towards income tax and other statutory liabilities. The Tribunal assessed the income of the deceased at Rs.12,000/- per month, after deducting Rs.3,000/- towards income tax and other statutory liabilities. After deducting $\frac{1}{3}^{\text{rd}}$ of the income towards personal expenses, the contribution of the deceased to the family would come to Rs.8,000/- per month and Rs.96,000/- per annum. Thus the loss of dependency is arrived at Rs.12,48,000/- (Rs.96,000 X 13).

21. The first petitioner being wife of the deceased is entitled to consortium. Having regard to the age of the first petitioner, I am inclined to award an amount of Rs.50,000/- towards loss of

consortium. The amounts awarded by the Tribunal under the other heads – loss of estate at Rs.15,000/-, transportation of dead body at Rs.3,000/- and funeral expenses at Rs.2,000/- are fair, just and proper. Thus, in all, the claimants are entitled to:

(1) Loss of income	:	12,48,000
(2) Loss of consortium	:	50,000
(3) Loss of estate	:	15,000
(4) Transportation of dead body	:	3,000
(5) Funeral expenses	:	2,000
Total	:	13,18,000

22. It is the duty of the tribunal to apportion the compensation among the claimants considering their dependency on the deceased. The first petitioner is more dependent on the deceased when compared to petitioner Nos.2 and 3. The petitioner Nos.2 and 3 may earn something after getting jobs. Taking into consideration the age and future needs, the amount of compensation is apportioned among the petitioners as follows:

Petitioner No.1	:	Rs.9,18,000
Petitioner No.2	:	Rs.2,00,000
Petitioner No.3	:	Rs.2,00,000
Total	:	Rs.13,18,000

The petitioners are also entitled to interest at 7.5% per annum from the date of petition till the date of realization. The respondent Nos.1 and 2 are jointly and severally liable to pay the compensation with interest and costs.

23. In the light of the foregoing discussion, I am fully agreeing with the contention of learned counsel for the claimants that the Tribunal has not awarded just and reasonable compensation. Accordingly, I

am unable to accept the contention of learned counsel for the respondents-RTC that the amount of compensation awarded by the Tribunal is on higher side. The point No.2 is answered accordingly.

24. In the result, MACMA No.496 of 2010 is dismissed without costs. MACMA No.809 of 2009 is allowed in part by enhancing the compensation from Rs.8,03,000/- to Rs.13,18,000/- (Rupees thirteen lakhs eighteen thousand only) with costs through out and interest at 7.5% per annum from the date of petition till realization. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 30th January, 2015
Ys

[\[1\]](#) (2009) 6 SCC 121