

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.3724 OF 2009

JUDGMENT:

This appeal is preferred by the appellants/petitioners challenging the judgment and award, dated 29.10.2008, passed in M.V.O.P.No.77 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional Chief Judge, City Civil Court, Secunderabad (for short, 'the Tribunal').

2. For the sake of convenience, the parties are hereinafter referred to as they are arrayed in the O.P. before the Tribunal.

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

On 20.12.2005, A.Ashok Kumar was proceeding towards Secunderabad on his Scooter bearing No.AP 10 AF 6904. When he reached near YMCA, Secunderabad, the driver of the R.T.C. Bus bearing No.AP 9Z 9452 came from Begumpet in a rash and negligent manner and hit the scooter of Ashok Kumar. The accident occurred due to the rash and negligent driving of the driver of the R.T.C. bus against whom the Station House Officer, Gopalapuram, Hyderabad registered a case in Crime No.374 of 2005 for the offences under Sections 337 and 304-A I.P.C. Due to accident, Ashok Kumar (hereinafter referred to as 'the deceased') sustained grievous injuries on various parts of the body and died while undergoing treatment in Gandhi Hospital, Secunderabad. By the time of death, the deceased was aged about 25 years and used to earn Rs.9,000/- per month as part time employee in Genius Consultants Limited, Secunderabad. Petitioner No.1 is the wife, petitioner No.2 is the mother and petitioner No.3 is the son of the deceased and they are dependants on the income of the deceased. The respondent, being the owner of the bus, is liable to pay compensation of Rs.13,50,000/- to the petitioners.

4. The respondent filed written statement denying all the averments made in the petition *inter alia* contending that the accident occurred due to the negligent driving of the scooter by the deceased and there was no negligence on the part of the driver of the bus. The petitioners are dependants on the income of the deceased. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

5. Basing on the above pleadings, the Tribunal framed the following issues:

1. Whether the accident occurred owing to the rash and negligent driving of the driver of APSRTC Bus bearing No.AP 9Z 9452?
2. Whether the petitioners are entitled to any compensation, if so, to what amount and against whom?
3. To what relief?

6. During the course of trial, on behalf of the petitioners, PWs.1 to 3 were examined and Exs.A.1 to A.13 were marked. On behalf of the respondent, no oral or documentary evidence was adduced.

7. On appraisal of oral, documentary evidence and 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 R.T.C. bus, which resulted in the death of the deceased, and allowed the petition in part by awarding compensation of Rs.4,21,800/- directing the respondent to pay the same with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

8. Feeling aggrieved by the judgment and award of the Tribunal, the petitioners preferred the present appeal.

9. Heard Sri A.V.K.S.Prasad, the learned counsel for the petitioners (appellants), and Sri N.Vasudeva Reddy, the learned Standing Counsel for the respondent – Corporation.

10. The contention of the learned counsel for the petitioners is three fold: (1) The Tribunal has not considered the oral testimony of PW.3 and Exs.A.11 to A.13 in right perspective and determined the monthly income which is on lower side; (2) The Tribunal has not taken into consideration the age of petitioner Nos.1 and 3 while awarding compensation under the head conventional damages; and (3) The amount of compensation awarded by the Tribunal is too meagre.

11. Per contra, the learned Standing Counsel for the respondent Corporation submitted that the Tribunal has rightly considered the oral and documentary

evidence and awarded just and reasonable compensation. He further submitted that there are no grounds much less valid grounds to interfere with the well considered judgment and award of the Tribunal.

12. Basing on the rival contentions, the point that arises for determination in this appeal is:

Whether the Tribunal has awarded just and reasonable compensation to the petitioners or not?

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Point:

13. As per the finding of the Tribunal, the accident occurred due to the rash and negligent driving of the driver of the R.T.C. bus which resulted in the death of the deceased. The finding recorded by the Tribunal on issue No.1 became final in view of non-filing of an appeal or cross objections by the respondent challenging the said finding. Basing on the material available on record, the Tribunal arrived at a conclusion that the deceased was aged about 26 years and taken the multiplier as '18'. As per the principle enunciated in **Sarla Verma v. Delhi Transport Corporation**, the appropriate multiplier to be taken for the age group of 26 to 30 years is '17'. As per the oral testimony of PWs.1 and 2, by the time of accident, the deceased was working as an employee in Genius Consultants Limited at Secunderabad. As per Ex.A.11, the deceased used to earn Rs.3,095/- per month. A perusal of Ex.A.13 reveals that the deceased was a Mechanic in Refrigeration and Air Conditioning. As per the testimony of PW.1, by the time of accident, her husband was working as part time employee in Genius Consultants Limited, Secunderabad. Her testimony further reveals that the deceased used to attend repairing work and earning Rs.9,000/- per month. Except the self-served testimony of PW.1, there is no other convincing evidence to prove that the deceased used to earn Rs.9,000/- per month. The fact remains that the deceased is a skilled person. The Tribunal cannot compare an ordinary worker with a skilled worker. Taking into consideration the educational qualification of the deceased as well as the future prospects, I am of the considered view that the deceased may earn Rs.4,200/- per month on average. The

Tribunal has not taken into consideration the future prospects and skill of the deceased while determining the monthly income. 1/3rd of earnings has to be deducted towards personal expenses of the deceased. The deceased may contribute Rs.2,800/- per month. The loss of dependency comes to Rs.5,71,200/- (2,800 X 12 X 17). Petitioner No.1, being the wife of the deceased, is entitled for loss of consortium. The Tribunal has awarded an amount of Rs.15,000/- towards loss of consortium which is not just and reasonable. Taking into consideration the age of the deceased and the recent judgments of the Hon'ble Apex Court, I am of the considered view that awarding of an amount of Rs.75,000/- towards loss of consortium is just and reasonable to meet the ends of justice. Unfortunately, petitioner No.3 lost his father at the age of one year. Petitioner No.3 permanently deprived to enjoy the love and affection of his father. Taking into consideration the age of petitioner No.3, I am inclined to award an amount of Rs.75,000/- towards loss of love, affection and supervision. I am also inclined to award an amount of Rs.10,000/- towards transportation charges of dead body and funeral expenses. Thus, the amount of compensation to which the petitioners are entitled to under various heads is as follows:

01.	Loss of dependency	Rs.5,71,200/-
02.	Loss of consortium	Rs. 75,000/-
03.	Loss of love, affection and supervision	Rs. 75,000/-
04.	Transportation charges and funeral expenses	Rs. 10,000/-
	Total:	Rs.7,31,200/-

The amount of compensation awarded under the above heads is just and reasonable to meet the ends of justice.

14. Petitioner Nos.1 and 3 are equally entitled for the enhanced amount of Rs.3,09,400/- which is rounded off to Rs.3,10,000/-. The respondent has to pay the interest on the enhanced amount at the rate of 7.5% per annum.

15. In the result, the Appeal is allowed in part by enhancing the quantum of compensation from Rs.4,21,800/- to Rs.7,31,200/- directing the respondent to pay the same with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. There shall be no order as to costs.

16. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 15.04.2015

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