

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.512 of 2006

JUDGMENT:

Aggrieved of the order dated 29.10.2005 in O.P. No.909 of 2004 on the file of the learned Chairman, Motor Vehicles Accidents Claims Tribunal-cum-V Additional District Judge (Fast Track Court), Rangareddy District at L.B.Nagar, whereby and whereunder a sum of Rs.92,500/- towards 50% of the compensation determined for the death of the husband of petitioner No.1 in a road accident, the petitioners preferred the instant appeal seeking to enhance the compensation, and to set aside the finding recorded by the Tribunal, as to contributory negligence to the effect that the deceased contributed to the accident having drunk, based on the Post Mortem Report contents.

2. In the original petition before the Tribunal, the appellants herein are the petitioners, and the respondent, which is Andhra Pradesh State Road Transport Corporation (for short, 'APSRTC') is respondent.

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

4. The facts, in brief, are that on 08.11.2004 at about 9.30 P.M., Sri K.Narsing Rao, husband of petitioner No.1, was crossing N.H.9 at Fruit Market, II Gate, Kothapet, during which time an APSRTC Corporation bus bearing registration No.AP10Z-6452 driven in a rash and negligent manner dashed him from behind, due to which he died instantly. The Saroornagar Police registered a case against the driver of RTC. bus. The petitioners stating that the deceased was working as a Security Guard in private organization and was drawing a salary of Rs.3,000/- per month and was used to contribute his income mostly for his family and due to his demise, the entire family members not only lost dependency, but also suffered mental agony and starvation, and, therefore, sought Rs.3,00,000/- as compensation by laying the claim under Section 166 of the Motor Vehicles Act, 1988.

5. Respondent opposed the claim denying taking place of the accident itself while contending that the petitioners managed the police and got the case registered to file the instant claim petition, and sought to dismiss the claim

petition.

6. Based on the pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry before the Tribunal, in order to substantiate the petitioners' claim, petitioner No.1, besides examining herself as P.W.1, examined one N.Yoganand as P.W.2, eye witness to the occurrence, and David as P.W.3, Proprietor of the said private organization in which the deceased used to work as Security Guard, drawing a salary of Rs.3,000/- per month, and marked Exs.A.1 to A.7. On behalf of the respondent, R.Ws 1 to 3 were examined and Exs. B.1 and B.2 were marked.

7. The Tribunal, disbelieving the evidence of R.Ws 1 to 3 and Exs.B.1 and B.2, recording finding that the accident vehicle was moving on the said road at the time of accident and the documentary evidence viz., Exs.A.1 to A.4 would prove that the accident has occurred due to rash and negligent driving of the RTC bus driver. The Tribunal also taking note of the fact that Ex.A.7-statement recorded under Section 161 of the Code of Criminal Procedure, Ex.A.4-certified copy of Inquest Panchanama and the contents of Ex.A.5-certified copy of Post Mortem report, which reflects that the deceased was in drunken condition while crossing the road, recorded a finding that there was contributory negligence in equal measures on the part of R.W.2, the driver of vehicle, and the deceased, and accordingly answered issue No.1.

8. On issue No.2, the Tribunal, on the ground that P.W.3 has not brought relevant register, disbelieved the contents of Ex.A.6 and the evidence of P.W.3 as to the stand of petitioners that the deceased was drawing a salary of Rs.3,000/- per month as Security Guard in the godown of P.W.3, but, however, fixed the monthly income of deceased at Rs.2,500/- as Security Guard, while accepting that the godown of P.W.3 was small godown. Basing on the contents of Exs.A.4 and A.5, the Tribunal has taken the age of deceased as 55 years on the date of accident. Thus, the Tribunal while holding that the deceased was earning Rs.30,000/- per annum, deducted 1/3rd there from towards personal expenses, and the remainder of Rs.20,000/- was taken towards contribution for the family, and applied the multiplier '8' considering the second schedule to Section 163-A of the Motor Vehicles Act, arrived at Rs.1,60,000/- towards loss of dependency. Besides the same, the Tribunal has also granted Rs.10,000/-

towards loss of consortium, Rs.10,000/- towards loss of love and affection and Rs.5,000/- towards transport and funeral expenses, determined the total compensation at Rs.1,85,000/-. However, basing on the finding recorded on issue No.1 that the deceased contributed to the accident to the extent of 50%, the Tribunal has divided the compensation of Rs.1,85,000/- into two halves and granted Rs.92,500/- towards compensation with interest at 7.5% per annum from the date of petition till the date of realization.

9. The said order, is under challenge in the instant appeal, preferred by the petitioners while seeking to enhance the compensation, contending in the grounds of appeal that the Tribunal overlooked the fact that mere consuming of alcohol does not amount to negligence and that the entire burden lies on the respondent to prove that the deceased was under the influence of alcohol to such an extent as to the consumption of alcohol itself contributed to the accident. It is also stated that the Tribunal, somehow, overlooked the fact that as per the evidence of eye witnesses and the documents filed in Criminal Court, the entire negligence is on the part of the driver of RTC bus. It is also stated that the Tribunal, without assigning any reason, did not take into consideration Ex.A.6-Salary Certificate and the oral evidence of P.W.3 by accepting the stand of petitioners that the deceased was drawing a salary of Rs.3,000/- per month, and, therefore, sought to modify the order and decree by granting the balance amount and set aside the finding recorded by the Tribunal as to the deceased contributing to the accident.

10. Heard Sri Kota Subba Rao, learned counsel for the appellants (petitioners), and Sri N.Vasudeva Reddy, learned counsel for APSRTC (respondent).

11. Perused the order and the evidence on record. In the light of the grounds as well as the contentions raised by the respective learned counsel, the points that arise for determination are as under:

1. Whether the finding recorded by the Tribunal that the deceased contributed to the accident can be sustained?
2. Whether the appellants are entitled to enhancement of compensation?

12. POINT No.1:

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So far as this point is concerned, the contention of learned counsel for the appellants that without there being a plea at all the Tribunal, merely basing on the P.M.E. report, arrived at a finding that the deceased was under the influence of alcohol contributed to the accident, and, therefore, that finding is unsustainable. The learned counsel for APSRTC *inter alia* contends that the P.M.E. report being medical record, since clearly states that there was alcohol content in the stomach of deceased when Post Mortem examination was done, cannot be brushed aside since the deceased was under the influence of alcohol contributed to the accident. The evidence of P.W.2, eye witness, shows that he found that the deceased was crossing N.H.9 at Fruit Market, II Gate, Kothapet, during which time the RTC bus driven at high speed in a rash and negligent manner dashed the said person when he was purchasing apples at that time at that place, and he rushed to the spot, but, however, he states in chief examination that the police did not mention his name as a witness though, he was one of the eye witnesses to the accident. In his cross-examination, nothing was brought out, except to the extent that he did not give report to the police about the accident and did not apprehend the driver of offending vehicle, but has given answer to a question that he was at a distance of about 10 yards away from the place of occurrence when the accident took place and denied the suggestion that he did not actually witness the accident. When there is no plea put forth by the APSRTC in its counter, much less framing an issue touching that aspect of the case and when there is no evidence even to suggest that the deceased contributed to the accident, on the mere ground that he was under the influence of alcohol, certainly, the Tribunal was not right in recording such a finding that the deceased had contributed to the accident just basing on the contents of Ex.A.5-certified copy of Post Mortem report. Therefore, since the said finding recorded by the Tribunal is not well reasoned and not based on proper appreciation of evidence and that too without there being any plea at all, which suffers from legal infirmity warranting interference, the same is liable to be set aside. Accordingly, the said finding is set aside holding the point in favour of the appellants.

13. POINT No.2:

Coming to the determination of compensation by the Tribunal, the Tribunal has not discarded the evidence of P.W.3 in entirety, but accepted to the extent that the deceased was working as Security Guard in the godown of P.W.3, in which case there cannot be any reason in rejecting Ex.A.6 merely on the ground that P.W.3 has not brought the relevant register. Even when looked at the evidence of P.W.1, who has asserted in her chief examination that the deceased used to earn Rs.3,000/- per month as salary and nothing was brought out in her cross-examination to condemn that assertion made by her, the stand of the petitioners that the deceased was drawing a salary of Rs.3,000/- per month as Security Guard in the godown of P.W.3 cannot be disbelieved. The annual income of deceased, thus, works out to Rs.36,000/-. Since the petitioners are numbering '2', deduction to the extent of 1/3rd is permissible towards personal expenses of the deceased. Thus, the contribution of deceased to the family works out to Rs.24,000/- per annum. Since the deceased was aged 55 years as recorded by the Tribunal based on the medical records, the relevant multiplier is '11' and when the same is applied, the loss of dependency works out to Rs.2,64,000/-. In view of the decision of the Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar & others v. M/s. National Insurance Company & others**, the petitioners are entitled to Rs.50,000/- towards conventional sum. Thus, the petitioners are totally entitled to Rs.3,14,000/-.

14. The compensation to which the petitioners are entitled though, exceeds the amount claimed, still, when the compensation arrived at is determined in accordance with the legal principles laid down by the Hon'ble Supreme Court, there cannot be any impediment in granting just, fair and adequate compensation in view of the decisions of the Hon'ble Supreme Court in **Laxman v. Divisional Manager, Oriental Insurance Company Limited and Rajesh and others v. Rajbir Singh and others**. Thus, the petitioners are entitled to Rs.3,14,000/- as against Rs.92,500/- granted by the Tribunal. The Tribunal has granted interest at 7.5% per annum. The same rate of interest is maintained on the enhanced amount of compensation also.

15. In the result, the appeal is allowed, and the award and decree dated 29.10.2005 passed by the Tribunal in O.P.No.909 of 2004 is modified, enhancing the compensation from Rs.92,500/- to Rs.3,14,000/- (Rupees Three lakh and fourteen thousand only), with interest at the rate of 7.5% per annum from the date of petition till realization. There shall be no order as to costs.

16. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

Date: **09.04.2015**

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Dt. 09.04.2015

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