

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.427 OF 2006

JUDGMENT:

This appeal is directed against the order dated 31.08.2005, in O.P. No.868 of 2004, passed by the Chairman, Motor Vehicle Accident Claims Tribunal – cum – III Additional District Judge, Karimnagar, whereby and whereunder a sum of Rs.2,94,000/- was granted as compensation for the death of one Bathina Durgaiah (deceased), husband of the first petitioner and father of the second petitioner, who died in a road accident that was said to have caused by the negligence of the driver of the A.P.S.R.T.C. bus bearing registration No.AP-10-Z-6426. The second respondent-Corporation preferred the instant appeal.

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

3. The claimants laid claim for Rs.5,00,000/- under Section 166(1)(c) of the Motor Vehicles Act, 1988, for the death of the deceased in a road accident that occurred on 15.06.2004 at about 8-15 p.m. while he was returning on a moped, when reached near Kodurupaka X road, the A.P.S.R.T.C. bus bearing registration No.AP-10-Z-6426 driven at high speed and in a rash and negligent manner, dashed his moped, due to which, he sustained fatal injuries and died instantaneously. The petitioners being the wife and son of the deceased claimed that the deceased was aged about 36 years on the date of the accident earning Rs.5,000/- per month as cable operator and sought a sum of Rs.5,00,000/- as compensation against respondent Nos.1 to 4 making the parents of the deceased as respondent Nos.3 and 4, as they could not come forward to join the petitioners.

4. Before the Tribunal, respondent No.1 filed counter denying the rash and negligent driving attributed to him and claiming that since he was under the employment of respondent No.2, if any compensation is awarded, it has to be paid by respondent No.2. Respondent No.2 also filed a separate counter opposing the entire claim, requiring the petitioners to prove the material allegations mentioned in the petition. Respondent Nos.3 and 4 did not appear and, therefore, they were set *ex parte* by the Tribunal.

5. Based on the above pleadings, three issues were framed by the Tribunal about responsibility for the accident and during enquiry the first petitioner herself was examined as PW.1 besides examining PW.2, an eye witness to the accident and marked Exs.A-1 to A-10. On behalf of respondent Nos.1 and 2, RW.1 was examined and no documents were marked.

6. The Tribunal having analysed the evidence of RW.1 arrived at the finding that only due to the rash and negligent driving of RW.1, the accident has occasioned resulting the death of the deceased and accordingly, tendered finding in favour of the petitioners. On issue No.2, taking the age of the deceased as 36 applied multiplier '14' and in the absence of legally acceptable evidence to prove his income at Rs.5,000/- per month, taking the income of the deceased at Rs.2,500/- per month and applying multiplier '14' arrived the loss of estate as Rs.2,80,000/-, by giving deduction of 1/3rd of the income towards personal expenses of the deceased, besides granting Rs.10,000/- towards consortium, Rs.2,000/- towards funeral expenses and Rs.2,000/- towards transportation and thus, a total sum of Rs.2,94,000/- was granted.

7. Aggrieved by the aforementioned quantum, the petitioners preferred the present appeal contending in the grounds of appeal that the Tribunal did not properly appreciate the evidence of RW.1 and that though, no evidence was let in to prove the income, the Tribunal has taken the earnings of the deceased at Rs.2,500/- per month and therefore, sought to set aside the order and decree passed by the Tribunal.

8. Heard Sri B.Mayur Reddy, learned Standing Counsel for the appellant-insurance company. No representation for respondent Nos.1, 2, 4 and 5. It is recorded in the cause title of the grounds of appeal that the third respondent is not a necessary party.

9. Now the short question that arises for consideration is whether the order under challenge is liable to be set aside?

10. Learned counsel for the appellant submits that the Tribunal ought to have considered the evidence of RW.1 in arriving at the finding on issue No.1.

11. A perusal of the order shows that RW.1 has made specific admission in his cross examination answering that the bus which he was driving was involved in the accident and that he was placed under suspension by the A.P.S.R.T.C. after conducting a regular departmental enquiry and a criminal case under Section 304-A IPC was pending against him in respect of the same accident and since then he has been driving a private

vehicle. On the basis of these categorical admissions made by RW.1, the finding recorded by the Tribunal that the accident had taken place only due to the rash and negligent driving of RW.1 cannot be faulted with.

12. Considering the monthly earnings taken by the Tribunal, learned Standing Counsel for the appellant contends that without there being any evidence on record, the Tribunal has taken Rs.2,500/- as monthly earnings which ought not to have been taken and notional income ought to have taken in determining the compensation. The very fact that the deceased met with an accident while returning home having collected amounts from the subscribers shows that he was running cable as evidenced from Ex.A-7 and A-8 reflecting that he was a cable operator and died in an accident and, therefore, the amount of Rs.2,500/- taken as monthly earnings of the deceased cannot also be viewed as excessive. Therefore, the Tribunal was right in taking the monthly earnings of the deceased as Rs.2,500/- and applying multiplier '14', arrived at the loss of dependency at Rs.2,80,000/- after deducting 1/3rd towards personal expenses of the deceased. Therefore, viewed from any angle, there is no merit in the appeal.

13. The Tribunal has awarded interest on the compensation at 9% per annum. However, the rate of interest is reduced to 7.5% per annum from the date of petition till realisation, as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1].

14. Accordingly, the appeal is allowed in part reducing the rate of interest to 7.5% per annum. Except to the said extent, the order of the Tribunal is confirmed in all other aspects. There shall be no order as to costs.

15. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

A. SHANKAR NARAYANA, J

February 20, 2015.

RRB

^[1] 2013ACJ1403 = 2013(4)ALT35