

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

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M.A.C.M.A.No.699 of 2009

JUDGMENT:

This appeal is filed by the appellants/petitioners assailing the judgment and Award, dated 11.05.2006 in O.P.No.326 of 2002 on the file of the Chairman, Motor Vehicle Accident Claims Tribunal-cum-I Additional District Judge, Ranga Reddy District at L.B.Nagar, Hyderabad (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 appeal, in brief, are as follows:

On 17.04.2002 at about 8:30 AM, Sri K.Babu Rajendra Prasad (hereinafter referred to as 'the deceased') was proceeding towards Balanagar on his bicycle and when he reached NRSA gate near bus stop, the driver of the RTC bus bearing No.AP-9Z/4786 had driven the same in a rash and negligent manner and dashed against the cycle of the deceased from backside. Due to the accident, the deceased sustained multiple injuries and died on the way to the hospital. Basing on the complaint, the Station House Officer, Balanagar registered a case in Crime No.113 of 2002 under Section 304-A I.P.C. against the driver of the RTC bus. At the time of the accident, the deceased was earning Rs.4,000/- per month. Petitioner No.1 is the wife and petitioner Nos.2 and 3 are the children of the deceased and they are dependents on the income of the deceased. Petitioners filed the petition claiming compensation of Rs.6,00,000/-.

4. The respondent – Corporation filed counter denying all the averments made in the petition including the age, income and manner of the accident. As per the averments made in the counter, the accident occurred due to rash and negligent act of the deceased and

there was no negligence on the part of the driver of the RTC bus.

5. Basing on the material available on record, the Tribunal framed the following issues:

1. Whether the accident occurred on account of rash and negligent driving on the part of driver of the Crime vehicle APSRTC Bus bearing No.AP-9Z-4786?

2. Whether the petitioners are entitled to compensation, if so, to what amount from the respondent?

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.6 were marked. On behalf of the respondent, no witnesses were examined and no documents were marked.

7. Basing on the material available on record, the Tribunal partly allowed the petition by granting compensation of Rs.2,40,400/-.

8. Feeling aggrieved by the judgment and Award of the Tribunal, the petitioners/claimants preferred the present appeal.

9. Sri G.L.Nageswara Rao, the learned counsel for the appellants, submitted that the Tribunal has not properly considered the oral testimony of PW.3 and recitals of Ex.A.6. He further submitted that the Tribunal ought to have granted compensation basing on Ex.A.6, Salary Certificate.

10. Sri N.Vasudeva Reddy, the learned Standing Counsel for A.P.S.R.T.C., submitted that the Tribunal rightly considered the income of the deceased and granted just and reasonable compensation. He further submitted that the Tribunal rightly discarded Ex.A.6, Salary Certificate.

11. Now the point for consideration is whether the Tribunal has awarded just and reasonable compensation to the petitioners?

12. As per the finding of the Tribunal, the accident occurred due to rash and negligent driving of the driver of the RTC bus bearing No.AP-9Z/4786. As per the oral testimony of PWs.1 and 2, the accident occurred due to rash and negligent driving of the driver of the RTC bus. In the cross-examination of PW.2, nothing is elicited to shake his testimony so far as the manner of the accident is concerned. The oral testimony of PWs.1 and 2 is supported by the recitals of Exs.A1, CC of F.I.R. and A2, CC of charge sheet so far as the manner of the accident is concerned. The recitals of Exs.A3, CC of inquest report and A4, CC of P.M.E. report clearly manifest that the deceased died due to injuries sustained in the road accident that occurred on 17.04.2002.

13. I am fully agreeing with the finding of the Tribunal that the accident occurred due to rash and negligent driving of the driver of the RTC bus bearing No.AP-9Z/4786, which resulted in the death of the deceased.

14. The predominant contention of the learned counsel for the appellants is that the Tribunal has discarded Ex.A.6, Salary Certificate on untenable grounds. PW.1 is the wife of the deceased and PW.3 is the alleged employer of the deceased. As per the oral testimony of PWs.1 and 3, the deceased was earning Rs.4,000/- per month while working as deliveryman in Manoj Moulds, Balanagar. In the cross-examination, PW.3 in unequivocal terms deposed that he has not been maintaining the registers of the employees. Except Ex.A6, there is no other convincing evidence to establish that the deceased was working as an employee under the control of PW.3. The possibility of issuance of Ex.A6 by PW.3 to help the petitioners cannot be ruled out completely. The Court has to take into consideration the ground realities while considering the income of the deceased. The Court

cannot expect documentary evidence to prove the income of the persons who are working in unorganised sector. It may not be possible for anyone to produce documentary evidence to prove the nature of employment, more particularly coolies and others. In the absence of documentary evidence, some guess work is inevitable to determine the income of the deceased. The Court has to take into consideration the prevailing market index and other attending circumstances.

15. Having regard to the facts and circumstances of the case and also the principle enunciated in **Ramachandrappa vs. Manager, Royal Sundaram Alliance Insurance Co. Ltd.**^[1] and **Syed Sadiq vs. Divisional Manager, United India Insurance Co. Ltd.**^[2], I am of the considered view that the deceased may earn Rs.3,000/- per month even by attending coolie work. In Ex.A.4, Postmortem Certificate, the age of the deceased is mentioned as '38' years. Hence, I am of the considered view that the deceased was aged about 38 years as on the date of the accident. If the age of the deceased is '38' years, the appropriate multiplier is '15' as per the principle enunciated in **Sarla Verma v. Delhi Transport Corporation**^[3]. It is the duty of the Court to deduct $\frac{1}{3}^{\text{rd}}$ towards personal expenses of the deceased (3000-1000=2000). The deceased may contribute Rs.2,000/- per month to his family members. The loss of dependency comes to Rs.3,60,000/- (2000 x 12 x 15). Petitioner No.1 being the wife of the deceased is entitled for consortium. Hence, I am inclined to award an amount of Rs.50,000/- towards loss of consortium in view of the law laid down in **Ramula Ramilaben Chinubhai Parmar vs. National Insurance Co.**^[4] I am also inclined to award an amount of Rs.10,000/- towards funeral expenses and Rs.10,000/- towards loss of estate. The compensation awarded under various heads is as follows:

Loss of dependency ---- Rs.3,60,000/-

Loss of consortium ---- Rs. 50,000/-

Funeral expenses ----- Rs. 10,000/-

Loss of estate ----- Rs. 10,000/-

Total compensation amount: Rs.4,30,000/-

16. Therefore, I am of the considered view that the compensation awarded under various heads is just and reasonable to meet the ends of justice. The petitioners are also entitled for interest at the rate of 7.5% from the date of petition till the date of realisation. It is the duty of the Court to apportion the compensation among the petitioners. Taking into consideration the age and future needs of the petitioners, I am inclined to apportion the compensation in the following manner:

Petitioner No.1-----Rs.2,30,000/-

Petitioner No.2-----Rs.1,00,000/-

Petitioner No.3-----Rs.1,00,000/-

17. The respondent being the owner of the crime vehicle is vicariously liable for the wrongful acts done by its employee during the course of employment. Therefore, the respondent has to pay the compensation.

18. In the result, the Appeal is allowed in part enhancing the quantum of compensation from Rs.2,40,400/- to Rs.4,30,000/- with interest at the rate of 7.5% from the date of petition till the date of realisation. There shall be no order as to costs.

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

T.SUNIL CHOWDARY, J

20th January, 2015

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[\[1\]](#) 2011 ACJ 2436

[\[2\]](#) 2014 (2) SCC 735

[\[3\]](#) . 2009 ACJ 1298

[\[4\]](#) 2014 ACJ 1430