

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A.No.821 of 2009

And

Cross-objections SR No.18233 of 2009

JUDGMENT:

This appeal is filed by the respondent Corporation challenging the judgment and award, dated 13.06.2008 in O.P.No.60 of 2007 on the file of the Chairman, Motor Vehicle Accident Claims Tribunal-cum-District Judge, at Nizamabad, wherein the Tribunal awarded compensation of Rs.4,74,588/-.

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 file the present appeal, in brief, are as follows:

On 13.09.2006 one Manthani Rajendra Kumar (hereinafter referred to as 'the deceased') and his friend Raju were proceeding to Sivarampalli from Khairatabad on a motor cycle bearing No.AP-09/EZ-763 by following the traffic rules. The deceased was pillion-rider on the motorcycle. When they reached old PCR Cross roads, the driver of the RTC bus bearing No.KA-32/F-874 drove the same in a rash and negligent manner and dashed the motor cycle from its behind. Due to the accident, the deceased sustained grievous injuries on various parts of the body. Immediately after the accident, the deceased was shifted to Osmania General Hospital, Hyderabad, wherein the duty doctor declared the death of the deceased. The Station House Officer, Saifabad, registered a case in Crime No.576 of 2006 under Section 304-A IPC against the driver of the bus. By the time of death, the deceased was a bachelor, aged about 27 years and used to earn Rs.15,000/- per month as a photographer in 'E' TV. Petitioners 1 and 2 are parents, petitioners 3 and 4 are sisters and petitioner No.5 is the

brother of the deceased and they are dependents on the income of the deceased. The respondent being the owner of the crime vehicle is liable to pay the compensation for the wrong caused by its driver during the course of his employment.

4. The respondent filed counter denying all the material averments made in the petition *inter alia* contending that the accident occurred due to the rash and negligent driving of the rider of the motor cycle, by name, Raju. The rider of the motor cycle alone is liable to pay compensation if any to the petitioners. 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 has taken place due to rash and negligent driving of the NEKRTC bus bearing No.KA-32/F-874 by its driver?
2. Whether the petitioners are entitled for compensation? If so, to what just 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.24 were marked. On behalf of the respondents, no oral or documentary evidence was adduced.

7. Basing on the oral and 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 bus and allowed the petition in part by awarding a compensation of Rs.4,74,588/- against the claim of Rs.10,00,000/-.

8. Being aggrieved by the judgment and award passed by the

Tribunal, the respondent-Corporation preferred the present appeal, whereas the claimants filed cross-objections vide SR No.18233 of 2009.

9. Heard Sri N.Mohan Krishna for Sri P.Vinayaka Swamy, the learned counsel for the appellant/respondent and Sri V.Ravi Kiran Rao, learned counsel for the respondents/claimants.

10. Learned counsel for the claimants submitted that the Tribunal has not rightly considered various documents filed by the claimants and awarded a meagre amount. He further submitted that the Tribunal has not applied appropriate multiplier while determining the loss of dependency. Learned counsel for the respondent submitted that the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of the bus is not sustainable either on facts or on law. He further submitted that the compensation awarded by the Tribunal under various heads is excessive and exorbitant.

11. Basing on the rival contentions made by the parties, the points that arise for consideration in this appeal are as follows:

1. Whether the rider of the motor cycle also contributed to cause the accident and if so, to what extent?
2. Whether the amount of compensation awarded by the Tribunal is fair, just and reasonable?
3. To what relief?

12. In order to prove the manner of the accident and the factum of death of the deceased, the second petitioner examined herself as P.W.1 and got marked Exs.A1, A2, A3, A4 and A5. P.W.2 is the eye witness to the accident. On behalf of the respondents, no oral or documentary evidence was adduced.

13. A careful perusal of the testimony of P.W.1 reveals that she is not an eyewitness to the accident. Therefore, her testimony is no way

helpful to prove the manner of the accident. As seen from the testimony of P.W.2, on the date of accident himself and deceased were proceeding on the motor cycle, and when they reached Old Police Control Room, Hyderabad, the driver of the bus bearing No.KA-32/F-874 had driven the same in a rash and negligent manner and dashed the motor cycle from its behind. No suggestion was put to P.W.2 that the accident occurred due to his rash and negligent driving of the motor cycle and there was no negligence on the part of the driver of the bus. In the cross-examination of P.W.2, nothing is elicited in support of the stand taken by the respondent. P.W.2 and the driver of the RTC bus are the competent persons to speak the manner of the accident. In the cross-examination of P.W.2, nothing is elicited to shake his testimony so far as the manner of the accident is concerned. Simply because at the time of accident P.W.2 had driven the motor cycle, that itself is not a sufficient ground to disbelieve his testimony. As per the recitals of Ex.A1 FIR and Ex.A4 charge sheet, the accident occurred due to the rash and negligent driving of the driver of the bus. A perusal of Ex.A5 Motor Vehicles Inspector's Report reveals that there was no mechanical defect in the bus. As per the recitals of Ex.A2 Post-mortem report and Ex.A3 inquest report, the deceased died due to injuries sustained in a motor vehicle accident. The oral testimony of P.Ws.1 and 2 is supported by Exs.A1, A4 and A5.

14. Apart from P.W.2, the driver of the bus is the competent person to speak about the manner of the accident. For one reason or other, the driver of the bus did not appear before the Tribunal to demolish the case of the petitioner. The respondent also did not take any steps to examine the driver of the bus or any other eyewitness to the incident to substantiate the stand taken by it. If the driver of the crime vehicle abstains himself from entering into the witness box, the Tribunal can draw an adverse inference. Absolutely there is no evidence on record, much less legally admissible evidence to establish the

negligence on the part of the rider of the motor cycle. The Tribunal rightly appreciated the oral, documentary evidence and other material available on record and arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the bus, which resulted in the death of the deceased. I see no reasons much less valid reasons to set aside the finding recorded by the Tribunal on issue No.1.

15. In the light of the foregoing discussion, I am unable to accede with the contention of the learned counsel for the respondent/appellant that the rider of the motor cycle was also contributed to cause the accident. Hence, point No.1 is answered in favour of the claimants and against the respondent.

16. **Point No.2:** As per the testimony of P.Ws.1 to 3, the deceased was working as a photographer in 'E' TV. The Tribunal has taken the monthly income of the deceased at Rs.5019/- per month. The oral testimony of P.W.3 coupled with Exs.A14 and A18 reveal that by the time of death, the deceased was drawing a gross salary of Rs.5369.50ps. and net salary of Rs.4691.50ps. Except the self-served testimony of P.W.1, there is no other convincing evidence to establish that the deceased was earning Rs.15000/- per month. A perusal of Ex.A7 to A13, A15, A16, A20, A21, A22, A23 and A24 reveal the educational and technical qualifications of the deceased. The testimony of P.W.2 clearly reveals that there is every possibility for the deceased to get promotions during the course of his employment in future. As per the principle enunciated in **SAVITHA v. BINDAR SINGH AND OTHERS**^[1], the Tribunal has to take into consideration the future prospects of the permanent employee. It is an admitted fact that the deceased is not a Government employee. Taking into consideration the educational qualifications of the deceased, I am of the considered view that the deceased may earn Rs.6,500/- per

month. Per annum it comes to Rs.6500 X 12 = Rs.78,000/-. The Tribunal has deducted 1/3rd towards personal expenses of the deceased. As per the principle enunciated in Sarla Verma's case(supra) 50% has to be deducted towards personal expenses in case of death of bachelors. After deducting 50% of the income, the deceased may contribute an amount of Rs.39,000/- per annum. The Tribunal has taken the age of the mother of the deceased and deducted 1/3rd only towards personal expenses. As per the decision in ***Sarla Varma Vs. Delhi Transport Corporation***^[2], the age of the deceased has to be taken into consideration to determine the multiplier. By the time of death, the deceased was aged about 27 years. The appropriate multiplier for the age group 26 to 30 is '17'. Then, the loss of dependency comes to Rs.39,000/- X 17 = Rs.6,63,000/-. The Tribunal awarded an amount of Rs.5,000/- towards transportation charges and funeral expenses, which is just and reasonable. By following the decision reported in ***SHYAM NARAYAN Vs. KITTY TOURS TRAVELS & OTHERS***^[3], an amount of Rs.50,000/- was awarded by the Tribunal towards loss of love and affection. I am of the considered view that awarding of an amount of Rs.50,000/- by the Tribunal towards loss of love and affection is just and reasonable. Thus the total compensation awarded under various heads is as follows:

Loss of dependency	: Rs.6,63,000/-
Transportation and funeral expenses	: Rs.
5,000/-	
Love and affection	: Rs. 50,000/-

17. The petitioners are also entitled for interest at 7.5% per annum from the date of petition till the date of realisation on the enhanced amount of compensation. The petitioner Nos.1 and 2 alone are entitled equally for the enhanced amount. As rightly pointed out by the

learned counsel for the claimants, the compensation awarded by the Tribunal is not just and reasonable. Hence, point No.2 is answered in favour of claimants and against the respondent Corporation.

18. Accordingly, M.A.C.M.A.No.821 of 2004 is dismissed and the Cross-objections M.A.C.M.A.(SR) No.18233 of 2009 is allowed by enhancing the compensation from Rs.4,74,588/- to Rs.7,18,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. No costs. Consequently, miscellaneous petitions pending if any in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J

16th February, 2015
Rns

[\[1\]](#) (2014) 4 SCC 505

[\[2\]](#) . 2009 ACJ 1298

[\[3\]](#) IV (2005) ACC 1