

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.874 OF 2009

JUDGMENT:

_____ This appeal is preferred by the appellants/petitioners challenging the judgment and award, dated 24.10.2008 passed in M.V.O.P.No.36 of 2007 on the file of the VI Additional District Judge-cum-Motor Accidents Claims Tribunal (Fast Track Court), Rajahmundry, East Godavari District (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 28.09.2006 at about 6:15 PM, Sri Sreeramulu (hereinafter referred to as 'the deceased') was proceeding to Thokada Village from Mallampudi on his cycle. The driver of the Bus bearing No.AP 5Y 4466 had driven the same in a rash and negligent manner and hit the cycle of the deceased. Due to accident, the deceased sustained multiple injuries and died on the spot. The concerned Station House Officer registered a criminal case against the driver of the bus under Section 304-A I.P.C. By the time of accident, the deceased was aged about 60 years and used to earn Rs.3,000/- per month by attending coolie work. The petitioners are dependants on the income of the deceased. Therefore, the petition is filed claiming compensation of Rs.2,50,000/-.

4. _____ Respondent Nos.1 and 2 remained *ex-parte*. Respondent No.3 filed written statement denying all the averments made in the petition *inter alia* contending that the bus was hired with A.P.S.R.T.C. i.e., respondent No.4 as on the date of accident, therefore, this respondent is not liable to pay compensation 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. Respondent No.4 filed written statement *inter alia* contending that respondent Nos.1 to 3 are liable to pay compensation, if any, to the petitioners in view of the terms and conditions of the Insurance Policy. This respondent – A.P.S.R.T.C. has taken the bus on hire basis, therefore, it has nothing to do with the alleged accident. The accident occurred due to the rash and negligent act of the deceased and there was no negligence on the part of the driver of the A.P.S.R.T.C. bus. Hence, the petition may be dismissed.

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

(1) Whether the accident was occurred due to rash and negligent act of R.1, driver of the RTC Bus bearing No.AP 5Y 4466?

(2) Whether the petitioner is entitled for claim of compensation? If so, to what amount, and against which of the respondents?

(3) To what relief?

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7. During the course of trial, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A.1 to A.5 were marked. On behalf of the contesting respondent, no oral evidence was let in and Exs.B.1 and B.2 were marked.

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8. Basing on the 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 RTC bus which resulted in the death of the deceased and allowed the petition in part by awarding compensation of Rs.90,000/- directing the respondents to deposit the amount with interest at the rate of 7.5% per annum from the date of petition till the date of deposit of the compensation amount.

9. Feeling aggrieved by the judgment and award of the Tribunal, the petitioners filed the present appeal.

10. Heard Sri T.Nagarjuna Reddy, the learned counsel for the petitioners and Sri Srinivasa Rao Vutla, the learned counsel for respondent No.3. In spite of service of notice, none appeared on behalf of respondent Nos.1, 2 and 4.

11. The contention of the learned counsel for the petitioners is two fold: (1) The Tribunal committed an error while determining the income of the deceased and thereby awarded lower amount of compensation, and (2) The amount of compensation awarded by the Tribunal is too meagre.

12. Per contra, the learned counsel for respondent No.3 submitted that the Tribunal has awarded just and reasonable compensation to the petitioners.

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13. Now the point that arises for consideration in this appeal is:

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

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Point:

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14. As per the finding of the Tribunal, the accident occurred due to the rash and negligent driving of the driver of the RTC bus which resulted in the death of the deceased. Respondent Nos.1 to 3 did not choose to file appeal or cross-objections challenging the finding of the Tribunal on issue No.1. The finding recorded by the Tribunal on issue No.1 became final. Hence, there is no need to discuss this issue at length in this appeal. Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the RTC bus which

resulted in the death of the deceased.

15. As per the findings recorded by the Tribunal, the deceased was aged about 60 years by the time of accident. The Tribunal applied the multiplier '8' in order to determine the loss of dependency. As per the decision reported in **Sarla Verma v. Delhi Transport Corporation** ^[1], the multiplier applicable for the age group of 56-60 is '9'. Therefore, this Court inclined to take the multiplier as '9'. The fact remains that the deceased was a coolie by profession. The Tribunal has taken the notional income by following the schedule to Section 163 of the Motor Vehicles Act, 1988 on the ground that the petitioners failed to produce the documentary evidence to prove the income of the deceased. It is highly difficult to produce the documentary evidence to prove the income of the coolie. The Tribunal or the Court has to take into consideration the ground realities while deciding the matters under the Motor Vehicles Claims Cases. Taking into consideration the age of the deceased, I am of the considered view that he may earn Rs.2,400/- per month. The Tribunal has deducted 1/3rd towards personal expenses of the deceased. In view of the decision in **Sarla Verma's** case (supra 1), the Tribunal or the Court has to take into consideration the number of claimants. In the present case, the claimants are five in number. Therefore, this Court inclined to deduct 1/4th towards personal expenses of the deceased. The deceased may contribute Rs.1800/- per month to his family members. The loss of dependency comes to Rs.1,94,400/- (1800 X 12 X 9). The Tribunal also awarded an amount of Rs.10,000/- towards loss of estate. The Tribunal rightly awarded the amount of Rs.10,000/- towards loss of estate. Thus, the amount of compensation to which the petitioners are entitled to under both the heads is as follows:

<u>01.</u>	<u>Loss of dependency</u>	<u>Rs.1,94,400/-</u>
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<u>02.</u>	<u>Loss of estate</u>	<u>Rs. 10,000/-</u>	-
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-	<u>Total:</u>	<u>Rs.2,04,400/-</u>	-

16._____

Petitioner Nos.1, 3, 4 and 5 are equally entitled for the enhanced amount of compensation. As per the finding recorded by the Tribunal, respondent Nos.1 to 4 are jointly and severally liable to pay compensation to the petitioners.

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17. In the result, the Appeal is allowed in part by enhancing the quantum of compensation from Rs.90,000/- to Rs.2,04,400/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. There shall be no order as to costs.

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

T.SUNIL CHOWDARY, J

Date: 04.03.2015

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[\[1\]](#) . 2009 ACJ 1298