

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.652 of 2009

and

Cross-Objections (Sr)No.3016 of 2009

Common Judgment:

Both the APSRTC and the claimants have challenged the award dated 10.01.2008 in M.V.O.P.No.285 of 2006 passed by the Chairman, Motor Accident Claims Tribunal-cum-I Additional Chief Judge, City Civil Court, Secunderabad (for short 'the Tribunal'), the former in the form of instant appeal and the latter in the form of cross-objections.

2 a) On factual side, on 08.08.2006 when the deceased—B.Venkata Swamy a Kalasi in Railway Engineer Work Shop along with his colleague Shaik Abdul Raheem was proceeding from South Lallaguda to Mirzalguda on a Scooter bearing No.AP 28 F 3817 and when they reached near New Railway Bridge, North Lallaguda, a RTC bus bearing No.AP 9Z 5838 belonging to Ranigunj-II Depot being driven by its driver in a rash and negligent manner and dashed the scooter and the deceased and his friend fell down on the road and front wheel of the bus ran over their heads. In the resultant accident, both of them received grievous injuries and died on the spot. With these averments the claimants, who are the wife and children filed MVOPNo.285 of 2006 under Section 166 of Motor Vehicles Act, 1988 (for short "MV Act") against respondent—APSRTC and claimed Rs.7,00,000/-.

b) Respondent—RTC filed counter and opposed the claim denying all the material averments made in the petition. R2 denied the avocation and income of the petitioner. R2 contended that there is no negligence on the part of driver of the bus and thus prayed to dismiss the O.P.

c) During trial, PWs.1 to 3 were examined and Exs.A1 to A14 were

marked on behalf of claimants. No oral or documentary was adduced on behalf of respondent.

d) The Tribunal on appreciation of oral and documentary evidence has awarded a sum of Rs.5,53,000/- with costs and interest at 7.5% p.a under different heads as follows:

Loss of dependency Rs. 5,20,000-00

Loss of consortium Rs. 15,000-00

Funeral expenses Rs. 2,000-00

Transport charges Rs. 1,000-00

Loss of estate and amenities Rs. 15,000-00

Total Rs. 5,53,000-00

Hence the appeal and cross objections challenging the award.

3) The parties in the appeal are referred as they stood before the Tribunal.

4) Heard arguments of Sri N.Vasudeva Reddy, learned counsel for the appellant/APSRTC and Smt. P.Rajeswari, learned counsel for respondents/claimants—cross objectors.

5 a) Challenging the award learned counsel for appellant/APSRTC firstly argued that Tribunal grossly erred in fixing fault on the bus driver. The facts and evidence would show that the accident was occurred near New Railway Bridge, North Lallaguda where the road is narrow about 20 feet width and the accident was occurred at a busy time 4.15 PM and hence the bus driver had no occasion to drive the bus at high speed and muchless in a rash and negligence manner. He contended that deceased/scooterist himself drove his vehicle in a rash and negligent manner and dashed the bus and therefore, Tribunal ought to have fixed the liability on the deceased

and dismissed the claim petition.

b) Secondly, he contended that compensation awarded was on high side inasmuch as though the claimants failed to produce the pay slip of the deceased fixed his income as Rs.5,000/- per month which is on high side and therefore, compensation was unduly escalated. He thus at the first instance prayed to dismiss the claim petition and alternatively re-assess the compensation.

6 a) Per contra, learned counsel for respondents/claimants firstly argued that fault solely lies with the bus driver, as he rashly drove the vehicle and dashed the scooter and this fact was clearly spoken by PW2—an independent eyewitness, but the RTC has not produced any contra evidence by examining its driver to prove his innocence, if any.

b) Secondly, regarding quantum of compensation, he argued that the compensation awarded by the Tribunal was a very low amount in many respects and in fact, the claimants filed Cross-objections (Sr) No.3016 of 2009 for enhancement of compensation. Expatiating his stand, he argued that as per the evidence of PW3 coupled with Ex.A11—salary certificate, the deceased was drawing gross salary of Rs.7,092/- p.m. by the time of his death but the Tribunal took only his net salary of Rs.5,000/- for computation of loss of dependency. It also failed to take the future prospects into consideration and thereby compensation was drastically reduced.

c) Nextly, he submitted that the Tribunal granted low compensation for loss of consortium and funeral expenses and as per the decision of the Apex Court in ***Rajesh and others vs. Rajbir Singh and Others***, the claimants deserve much higher compensation. He therefore prayed to allow the Cross Objections and enhance the compensation.

7) In the light of above rival arguments, the point for determination is:

“Whether the award passed by the Tribunal is factually and legally sustainable?”

8) **POINT:** Accident, involvement of bus bearing No. No.AP 9Z 5838 and Scooter bearing No.AP 28 F 3817 and death of deceased and one Shaik Abdul Raheem are not in dispute.

a) Fault of the bus driver is concerned, the claimants examined PW2—eye witness. His version is that on 08.08.2006 at about 4.15 PM while himself and T.C.Emmanuel were proceeding from South Lallaguda to Mirzalguda and reached near New Railway Bridge, North Lallaguda, they saw the offending RTC bus being driven by its driver at high speed and in a rash and negligent manner and while overtaking the auto from the right side the bus crossed the middle line and dashed the opposite coming scooter thereby the rider and pillion rider of the scooter fell down and front wheel ran over their heads causing their instantaneous death. He stated that his vehicle is about 50 feet behind the place of accident and thus he witnessed the accident. He further stated that on knowing that both the deceased were railway employees like him, he and Emmanuel went to the police station, Lallaguda and informed the police. In the cross-examination also he confirmed his version regarding manner of occurrence of accident and stated that while overtaking auto the RTC bus driver dashed the scooterist and he denied the further suggestion that accident took place due to the fault of auto driver but not the bus driver. He denied the further suggestion that he did not witness the accident.

b) A perusal of the evidence of PW2 would show that he is a third party and nothing specific was brought on record to disbelieve his version. Of course, in the charge sheet he is not mentioned as eyewitness. However, that alone was not a ground to discard his evidence. Apart from his oral evidence, Ex.A3—charge sheet would show that police too found fault with bus driver and charge sheeted him. Therefore, the oral and documentary evidence placed by the claimants clearly prove the fault of the bus driver. Except harping that bus driver was not responsible for the accident APSRTC has not examined its driver or the passengers of the bus to prove his innocence, if any. Therefore, the Tribunal rightly fixed liability on him.

Hence, I find no merit in the argument of the appellant in this regard.

c) Then coming to the quantum of compensation, the Tribunal awarded Rs.5,20,000/- towards loss of dependency taking the net salary of the deceased as Rs.5,000/- and '13' as multiplier. The contention of the appellant is that without there being any cogent evidence the Tribunal accepted the net salary as Rs.5,000/- which is on high side. Whereas the claimants contend that his gross salary was Rs.7,092/- as per Ex.A11 and said amount coupled with future prospects should have been taken into consideration for computation of compensation. In this context, a perusal of Ex.A11 which is purported to be a salary certificate said to be issued by Executive Engineer, South Central Railway, Lallaguda shows that deceased was working as Helper Grade-I in the Railway Workshop and getting gross salary of Rs.7,092/- by the time of his death. PW3 who is the Personal Inspector in Executive Engineer Office, deposed with the help of service particulars of the deceased also confirmed this fact. Therefore, it cannot be said that there is no cogent evidence relating to salary of the deceased. The Tribunal without any reason took only the net salary for computation of compensation. It must be noted that entire gross salary of an employee except the statutory deductions should be taken for computation of compensation. So far as future prospects are concerned, absolutely there is no evidence in this regard. Therefore, the same cannot be taken into consideration. Thus, loss of dependency comes to **Rs.7,28,000/-** (Rs.7,000/- (Rs.7,092/- is rounded to Rs.7,000/-) x 12 x $\frac{2}{3}$ x 13).

d) So far as the compensation under other heads is concerned, it is true that in **Rajesh's** case (1 supra) the Apex Court awarded Rs.1 lakh towards loss of consortium and Rs.25,000/- towards funeral expenses. In the instant case, the Tribunal awarded Rs.15,000/- towards loss of consortium and Rs.2,000/- towards funeral expenses. Compensation for funeral expenses being a very low amount the same is enhanced to **Rs.25,000/-**. Loss of consortium is concerned, it is seen that deceased died not in the prime of his youth but in his middle age and having regard to the said fact, compensation of Rs.15,000/- towards loss of consortium is considered as reasonable

one.

Thus, the total compensation payable to the claimants under different heads is detailed as below.

Loss of dependency Rs. 7,28,000-00

Loss of consortium Rs. 15,000-00

Funeral expenses Rs. 25,000-00

Transport charges Rs. 1,000-00

Loss of estate and amenities Rs. 15,000-00

Total Rs. 7,84,000-00

So, the compensation is enhanced by Rs.**2,31,000/-** (Rs.7,84,000/- minus Rs.5,53,000/-). It may be noted that the said amount is over and above the original claim of Rs.7,00,000/- made by the claimants. However, the Apex Court in a decision reported in ***Nagappa vs. Gurudayal Singh and others*** has held that in a fit case while granting just compensation the Court can award more compensation than claimed. It observed thus:

“16. From the aforesaid observations it cannot be held that there is a bar for the Claims Tribunal to award the compensation in excess of what is claimed, particularly when the evidence which is brought on record is sufficient to pass such award. In cases where there is no evidence on record, the Court may permit such amendment and allow to raise additional issue and give an opportunity to the parties to produce relevant evidence.”

9) In the result, Appeal and Cross Objections are disposed of and ordered as follows:

1. MACMA No.652 of 2009 filed by the APSRTC is dismissed.
2. Cross Objections (SR) No.3016 of 2009 filed by the claimants is partly allowed and compensation is enhanced by Rs.**2,31,000/-** with proportionate costs and simple interest

@ 7.5% per annum from the date of OP till the date of realization.

3. The respondent/APSRTC is directed to deposit the compensation amount within two months from the date of this judgment, failing which execution can be taken out against it.
4. The claimants are directed to pay additional Court Fee on the amount of Rs.**84,000/-** (Rs.7,84,000/- minus Rs.7,00,000/-) awarded over and above their claim within one month from the date of this judgment. Registry shall issue certified copy to the claimants only thereafter.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 10.02.2015

Note: L.R Copy to be marked: Yes / No

Murthy