HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

M.A.C.M.A.Nos.866 of 2008 AND 74 of 2009

COMMON JUDGMENT:

Since both the M.A.C.M.As., are filed against an Award passed in O.P. No.838 of 2005 on the file of the I Additional Metropolitan Sessions-cum-XV Additional Chief Judge, Hyderabad, they are disposed of by this common judgment.

M.A.C.M.A.No.866 of 2008 is filed by the claimants seeking enhancement of the compensation awarded against the death of one Radhakrishna Sharma, whereas M.A.C.M.A.No. 74 of 2009 is filed by the Andhra Pradesh State Road Transport Corporation (for short "the Corporation") challenging the Award of the Tribunal.

For the sake of convenience, the parties will hereinafter be referred to as arrayed in O.P.

The facts in issue are as under:

The claimants in O.P. No.838 of 2005 are wife, two sons, daughter and mother of the deceased-Radhakrishna Sharma. An application under Section 166 of the M.V. Act came to be filed seeking compensation of Rs.26,00,000/- for the death of the said person in the motor accident that took place on 16.12.2004. The averments in the claim petition show that on the fateful day, the deceased, who was working as a Manager in State Bank of Hyderabad, was proceeding from his house at Dharmareddy Colony, Kukatpally Housing Board to his office at Begumpet on his scooter bearing No.A.P.10-Z-3252. When he reached near HUDA park, Naina Gardens, Kukatpally road, a RTC bus bearing No.A.P-

10-Z-3252, which was coming from Miyapur side dashed the scooter of the deceased from behind, due to which, the deceased fell down and sustained grievous bleeding injuries. Immediately thereafter he was shifted to Remedy Hospital, Balanagar and from there to Apollo Hospital, Jubilee Hills, Hyderabad, where he succumbed to the injuries while undergoing treatment in the Hospital. It is stated that the said accident took place due to rash and negligent act of the Driver of the RTC bus. In respect of the above incident a case in Crime No.939 of 2004 came to be registered for an offence punishable under Section 337 IPC and later altered to Section 304-A IPC. The deceased is said to be the sole earning member of the family and his entire family consisting of wife, three children and mother were dependant on him. Hence, the above application.

Respondents 1 and 2 filed their counter disputing the allegations in the claim petition and put the petitioners to strict proof of the allegations made therein. It is the case of the respondents that the Driver of the bus is not at all responsible for the accident and that there was negligence was on the part of the deceased while riding the Scooter.

On the basis of the above pleadings, the Tribunal framed the following issues for determination :

1. Whether the accident resulting in death of Kuchi Radha Krishna Sharma occurred owing to the rash and negligent driving of the driver of APSRTC Bus bearing No.A.P.-10-Z-3252?

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

3. To what relief ?

In support of their case, the claimants examined P.Ws.1 to 4 and got marked Exs.A-1 to A-8. No oral or documentary evidence was adduced on behalf of the respondents. However, the Court got marked Ex.X-1- the service particulars of the deceased.

After analyzing the evidence available on record, the Tribunal held that the accident took place due to rash and negligent driving of the driver of the RTC bus and accordingly awarded a sum of Rs.8,16,148/- with proportionate costs and interest at the rate of 6.5% p.a. from the date of petition till the date of realization. Challenging the same, these two appeals are filed.

Heard the learned counsel appearing for the claimants and learned counsel appearing for the respondent/Corporation.

In order to appreciate the rival argument it would be necessary to extract the relevant portion of the evidence of P.Ws.1 to 4 which is as under :-

P.W.1, who is the son of the deceased deposed that on the fateful day at about 10.30 a.m., his father was proceeding from the house to his office at Begumpet on a scooter bearing No. ATY-7313 and when he reached Naina Gardens, near HUDA park, a RTC bus bearing No.A.P.10-Z-3252 driven by its Driver in rash and negligent manner and at high speed came from behind and dashed the scooter. Immediately after the incident, his father was shifted to a private hospital at Kukatpally and from there to Apollo Hospital, Jubilee Hills, Hyderabad where he was declared dead.

P.W.2 was examined as an eyewitness to the incident. According to him, on that day himself and one Ashok Chakravarthy were waiting for another friend and were standing at a distance of three yards from the scene of the accident. It is specifically stated that while the deceased was going on his scooter, a RTC bus driven by its driver, in rash and negligent manner came from behind and dashed the scooterist. On hearing the sound he is said to have rushed to the place of accident and found the deceased lying on the road with bleeding injuries on the head. According to him, while the persons who gathered there were trying to contact Ambulance service, he contacted P.W.1, who is his friend, and informed about the incident. It was categorically stated by him that due to rash and negligent driving of the driver of the bus, the above accident took place. Though he was subjected to cross-examination nothing useful was elicited to discredit his testimony. In his cross-examination he clearly deposed that he has noted down the RTC bus number and the police examined him in the Hospital. He denied the suggestion that the accident occurred due to rash and negligent driving by the driver of a lorry which passed through that road. He is said to have informed P.W.1 about the manner in which the accident took place and also the number of the bus which was involved in the accident.

P.W.3 who is the Manager of State Bank of Hyderabad, Zonal Office, Secunderabad was examined to speak to the salary of the deceased, who was working as a Manager in the Zonal Office of State Bank of Hyderabad. According to him the gross salary of the deceased was Rs.25,841.40 ps per month at the time of the incident.

P.W.4 is Office Incharge of O.A.D., State Bank of Hyderabad, Zonal Office, Secunderabad. His evidence also discloses that the salary drawn by the deceased was

Rs.25,841.40 ps., and the net salary after all the deductions was Rs.11,561/-. Ex.A-7 is the pay certificate issued by the Branch Manager, which was marked through P.W.4. The claimant also got marked certified copy of the F.I.R., inquest report, Post Mortem examination report, certified copy of the charge-sheet and the death certificate of the deceased as Exs.A-1 to A-6 through P.Ws.1 and 2.

The learned Standing counsel for the Corporation mainly submits that there is any amount of doubt with regard to the manner in which the accident took place. According to him P.W.2 is not an eyewitness to the incident and he is a set-up witness.

On the other hand, the learned counsel for the claimants would submit that there is no material to disprove the presence of P.W.2 at the spot. The suggestions given to P.W.2 do not in anyway help the Corporation in establishing the absence of P.W.2 at the spot. He further submits that the amount of compensation awarded to the claimants is on lower side and as such the same needs to be enhanced. According to him, the deductions made in the salary of the deceased while computing the income are contrary to the law laid down by the supreme Court and as such the claimants are entitled to more than what has been awarded.

Insofar as the argument of the learned standing counsel for the Corporation with regard to the presence of P.W.2 at the scene, the Corporation was not able to place any circumstances before the court to disbelieve his presence. In fact no evidence was adduced on behalf of the corporation. It is to be noted that immediately after the incident, P.W.2 informed about the incident to P.W.1 and also told him the number of the bus which was responsible for the accident. As seen from the record, immediately after the accident P.W.1 lodged a report, in which he mentioned the number of the bus which was involved in the accident. The investigation made by the police after registering the F.I.R., lead to filing of a charge-sheet against the driver of the RTC bus. Therefore, it cannot be said that the driver of the bus was not responsible for the accident and that P.W.2 has not seen the incident. In fact P.W.2 was shown as an eyewitness even in the charge-sheet filed by the police. Therefore, the finding of the Tribunal that the accident took place due to rash and negligent act of the driver of A.P.S.R.T.C., bus bearing No.A.P.10-Z-3252 needs no interference.

Coming to the quantum of compensation to be awarded, the learned counsel for the claimants brought to the notice of the Court the deductions made by the Tribunal in the salary of the deceased while computing the total income of the deceased. P.Ws.3 and 4 in their evidence categorically stated that the gross salary of the deceased was Rs.25,841.40 ps in December, 2004 which fact was not seriously disputed by the learned counsel for the Corporation. But, the deductions which are made while computing the income appears to be contrary to the law laid down by the Apex Court.

As seen from the order, the Tribunal deducted amounts towards income tax, professional tax subscriptions to union, recovery for furniture and fixture etc., at Rs.12,667-50 ps. i.e., Housing Loan Deduction at Rs.3,085/-; demand loan of Rs.600/-; vehicle loan of Rs.1,250/-; Employees Credit Society loan Rs.2,140/-; professional tax of Rs.200/-; Association subscription at Rs.62.50 ps., and accordingly calculated the total dependency by taking the income of the deceased at Rs.11,561/-. Admittedly, the petitioner was working as a Manager in State Bank of Hyderabad in Zonal Office. His gross salary as deposed by P.Ws.3 and 4 was Rs.25,841.40 ps. The said evidence of P.Ws.3 and 4, with regard to the income of the deceased, is neither challenged in the cross-examination nor any contra evidence was adduced to disprove the same. As stated earlier, substantial amount was deducted from the gross salary of the deceased while fixing the net income for the purpose of calculating the compensation. The Apex Court in **Kanhsingh and another v. Tukaram and others**[1] while dealing with an accident which took place in the year 2006 and where it was found that the deceased who was working as a Manager in H.D.F.C. Bank was earning Rs.15,155/- p.m., deducted 10% towards income tax. Dealing with the aspect of deducting Income Tax from the salary of the deceased, the Apex Court in **Raghuvir Singh Matolya v. Hari Singh Malviya**[2] observed that "the deduction of the amount on account of HRA, CCA and medical allowance are on in correct basis and should have been taken into consideration for calculating the income of the deceased." Similarly in **Shyamwati Sharma and others v. Karam Singh and others**[3]**,** the Apex Court while calculating the loss of dependency held that the deduction towards income tax/surcharge should alone be considered to arrive at the net income of the deceased. The Apex Court categorically held that while ascertaining the income of the deceased, any deductions shown in the salary certificate viz., deductions towards GPF, life insurance premium, repayments of loans etc., should not be excluded from the income.

As per Ex.A7 salary certificate, the gross monthly income was Rs.25,841.40 ps., and the annual income of the deceased would be Rs.3,10,092/- (Rs.25,841 x 12). As stated earlier, the deceased was aged about 50 years at the time of the accident and still had number of years of service left to be served in the Bank. While considering the future prospects to be awarded, the Apex Court in **Sarla Verma v. Delhi Transport Corporation**[4] held that in case of a person who is aged about 50 years at the time of death, the future prospects should be 30% of the amount which the claimant was getting at the time of his death. If the salary of the deceased is taken as Rs.25,841/- and if 30% of the said amount is added towards future prospects to the income, the monthly income of the deceased would be Rs. 33,593/- (25,841/-+ 7752/-) and the total loss of income comes to Rs.4,03,119/- per annum.

The Apex Court in **Shyamwati Sharma case (3 supra)** observed that where the annual income is in taxable range, appropriate deductions should be made towards Income Tax. The Apex Court further held that Income Tax is a varying figure, with reference to taxable income after permissible deductions and year of assessment.

In view of the judgment referred to above and having regard to the Tax structure prevailing then and now, deducting 10% towards Income Tax would be just, reasonable and fair. If 10% is deducted towards income tax, the net annual income would be Rs.3,62,807/- (Rs.4,03,119.00 – Rs.40,311.00). As admitted by both the counsel the mother of the deceased expired and two of his sons have become majors. Therefore, deducting 1/3rd towards his personal and living expenses, the contribution of the deceased to the family would be Rs.2,41,871/-.

It is also not in dispute that the age of the deceased was about 50 years as on the date of accident. As per Sarla Verma's case (4 supra) the relevant multiplier to be adopted for calculating the loss of income would be "13". Adopting the said multiplier the total loss of dependency would be Rs. 2,41,871/- x 13 = Rs.31,44,323/-.

Apart from that the Tribunal awarded a sum of Rs.15,000/- towards loss of consortium and Rs.15,000/- towards loss of estate. But no amount awarded towards funeral expenses. Though the learned counsel for the claimants relied upon the judgments of the Apex Court in contending that the claimants are entitled more amount of loss of consortium and loss of estate but a three judge bench of the Apex Court in **Ramilaben Chinubhai Parmar and others v. National Insurance Co. & others**[5] awarded a consolidated amount of Rs.50,000/- as conventional amount. In view of the judgment of the Apex Court referred to above, an amount of Rs.30,000/- awarded by the Tribunal under the above count is enhanced to Rs.50,000/-.

At this stage, the learned counsel for the Corporation submits that the petitioner claimed only a sum of Rs.26,00,000/- as compensation and the quantum of compensation which is now awarded would go beyond the claim made which is impermissible under law.

In ***Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Company Limited and another***[6], *the Apex Court while referring to* ***Nagappa Vs. Gurudayal Singh***[7] held as under:

> "It is true that in the petition filed by him under Section 166 of the Act, the appellant had claimed compensation

> of Rs.5,00,000/- only, but as held in Nagappa vs. Gurudayal Singh (2003) 2 SCC 274, in the absence of any bar in the Act, the Tribunal and for that reason any competent Court is entitled to award higher compensation to the victim of an accident."

In view of the Judgments of the Apex Court referred to above the claimant is entitled to get more amount than what has been claimed. Further the Motor Vehicles Act being a beneficial piece of legislation, where the interest of the claimant is a paramount consideration the Courts should always endeavour to extend the benefit to the claimants to a just and reasonable extent.

In view of the above discussion, M.A.C.M.A.No.866 of 2008 is allowed by enhancing the compensation from Rs.8,16,148/- to Rs.31,94,323/- while M.A.C.M.A.No.74 of 2009 filed by the Corporation is dismissed. The enhanced amount shall carry interest at 6% p.a. from the date of petition till the date of realisation. The claimants would be entitled to the compensation awarded only after payment of deficit court fee.

There shall be no order as to costs.

The miscellaneous petitions, if any pending, shall stand closed.

C. PRAVEEN KUMAR, J

10.08.2015.

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[1] 2015 ACJ 594

[2] 2009 ACJ 1580 (SC)

[3] 2010 ACJ 1968

[4] 2009 ACJ 1298 (SC)

[5] 2014 Law Suit (SC) 340

[6] (2011) 10 SCC 756

[7] 2003 ACJ 12 (SC)