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æ\$âââêâââllllyyyTHE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI C.M.A.No.1274 of 2004 and Cross Objections
(SR).No.3341 of 2005 Common Judgment: The unsuccessful respondents/APSRTC preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 ('the Act' for short) assailing the Award dated 14.10.2003 of the learned Chairman, Motor Accidents Claims Tribunal-cum- II Additional Chief Judge, City Civil Court, Hyderabad passed in OP.No.2159 of 2000. The claimants/respondents in the said appeal having not been satisfied with the quantum of compensation awarded by the Tribunal had preferred Cross Objections (SR).No.3341 of 2005. 2. I have heard the submissions of the learned counsel for the appellants/APSRTC ('the appellants' for brevity) and the learned counsel for the cross objectors/respondents/claimants ('the claimants' for short). I have perused the material record. 3. The facts leading to the filing of the appeal and the cross objections, in brief, are as under: 3.1 To begin with, the case of the claimants is this: On 26.07.2000 Ghani Usman Khan, the deceased, was proceeding on his bicycle on Public Gardens road to go towards Assembly road. On the way, when his cycle had reached a place near the traffic point at Assembly main gate opposite to Ravindra Bharathi, one APSRTC bus bearing registration No. AP 9Z 5714 which was proceeding in the same direction and which was being driven by its driver at a high speed and in a rash and negligent manner had dashed the cycle of the deceased from behind. As a result, the deceased fell down on the road along with the cycle. The back right side tyre of the above said bus ran over him. While being shifted to the Osmania General Hospital, he had succumbed to the grievous injuries sustained in the said accident. His cycle was completely damaged in the accident. The 1st claimant is his wife, aged 42 years. The claimants 2 to 10 are his children. Prior to the accident, the deceased who was of 50 years of age was hale and healthy and used to work as a man Mazdoor class-II in Security Printing Press, Mint Compound, Hyderabad and earn Rs.10,000/- per month as salary. He was contributing his entire income for the maintenance of the family. Due to his sudden death in the said accident, the 1st claimant had lost her companion at an young age and all her dreams of life are shattered. She was subjected to shock and mental agony. She is not in a position to maintain and educate her children. Their future has become dark. All the claimants have become destitutes. They have no other source of income for their livelihood. Had the deceased continued in service he would have got promotions and would have drawn a salary of Rs.12,000/- per month by the date of his retirement. Hence, the claim petition is filed claiming a compensation of Rs.8 Lakhs recoverable from the appellants.' 3.2 In the written statement filed on behalf of the appellants before the tribunal, the manner and method of accident as pleaded by the claimants was denied and the manner and method of accident as per the version of the driver was pleaded and it is inter alia contended that the deceased was alone responsible for the accident and that the driver of the bus was not rash and negligent and was not responsible for the accident. It is further urged in the written statement that since the accident had solely occurred due to the negligence of the deceased himself, no compensation is payable by the appellants to the claimants and that in any view of the matter the claim is highly excessive, exorbitant and out of proportion. 3.3 At trial, the 1st claimant and a person who was said to have witnessed the accident were examined as PWs1 and 2. Exhibits A1 to A7 were marked on the side of the claimants. The driver of the APSRTC bus was examined as RW1 and the certified copy of judgment in CC.No.643 of 2000 was exhibited as exhibit B1. 3.4 On merits, the Tribunal had held that the accident resulting in death of the deceased had occurred due to the rash and negligent driving of RW1, the driver of the APSRTC bus. The Tribunal had determined a compensation of Rs.10,57,052/- but had only awarded Rs.8 lakhs by restricting the awarded amount to the claim made in the claim petition. The Tribunal had directed the appellants to pay the same with interest at 9% per annum simple from the date of the petition till date of payment along with costs. Therefore, the appellants having been aggrieved of the award of the Tribunal had preferred the appeal. The claimants, who are aggrieved of the award in so far as not granting the entire determined compensation of Rs.10,57,052/- had filed their cross objections. 4. At the time of hearing, the learned counsel for the appellants had contended as follows: - 'PW1 is not an eyewitness to the accident. PW2 was a traffic police constable, who was discharging duties at the relevant time at the place of accident. He had admitted in his cross examination that he was busy with his duties and that he had not witnessed the accident and that he had proceeded to the spot of accident on hearing the shrieks of a person. On the other hand, the insurance company had examined the driver of the bus as RW1 and had established its defence that the driver of the bus was not rash and negligent and was not responsible for the accident and that the deceased was alone responsible for the accident. Despite the said evidence and the fact that the driver was acquitted in the criminal case and the judgment in the criminal case was exhibited as exhibit B1, the Tribunal had erroneously held that the driver of the bus was alone responsible for the accident. The evidence on record would show that the driver of the bus was not rash and negligent and was not responsible for the accident. The tribunal had applied incorrect multiplier and erred in acting on exhibit A7-the copy of Form No.16 of Income Tax department for arriving at the income of the deceased and had erroneously taken Rs.10,000/- as the monthly income and had awarded a huge compensation of Rs.8 lakhs, to which the claimants are not entitled.' The learned counsel for the appellants had alternately contended that the tribunal ought to have held that the accident was due to the equal contributory negligence of both the driver of the bus and the deceased, in case the tribunal was not inclined to accept the defence of the appellants that the deceased was alone responsible for the accident. He had, therefore, prayed for allowing the appeal and setting aside the award or for limiting the liability of the appellants to pay the compensation to the extent of the contributory negligence of the driver of the bus. 5. On the other hand, the learned counsel for the claimants had contended as follows: - 'PW2 is an eyewitness and that he had supported the case of the claimants in his examination in chief, which is submitted to the Court in the form of an affidavit. His affidavit in lieu of examination in chief was filed into Court in November 2002. However, in the cross examination which was done on 25.02.2003 i.e., long after the accident and his examination-in-chief, he had stated that he had not witnessed the accident and that on hearing the shrieks of a person he went to the spot. The contents of crime records would show that police investigation had also revealed that the driver of the bus was responsible for the accident and hence, police had charge sheeted him. The evidence of RW1 is self serving evidence. Neither the conductor nor any independent eyewitness was examined to corroborate the version of RW1. The judgment of a criminal court is not binding on the civil court. The tribunal after properly evaluating the evidence had come to a right conclusion that the driver of the bus alone was responsible for the accident. The tribunal had correctly determined the compensation. The tribunal ought to have awarded the compensation of Rs.10,57,052/- as determined by it by following the settled principles of law in stead of restricting the awarded amount to Rs.8 lakhs as claimed in the petition. The tribunal ought to have seen that as per the settled law, the tribunal is competent to award more compensation than claimed if the facts of the case warrant awarding of such compensation. The claimants are only claiming Rs.10,57,052/- as determined by the tribunal in stead of Rs.8,00,000/- which is the amount claimed in their petition. Therefore, the cross objections may be considered and the compensation of Rs.10,57,052/- as determined by the tribunal may be awarded to the claimants while dismissing the appeal of the appellants. 6. Now the points for determination are: 1. Whether the pleaded accident resulting in the death of Ghani Usman Khan (the deceased) had occurred due to the rash and negligent driving of the driver of the Bus bearing No AP 9Z 5714, as contended by the claimants? Or, in the alternative, whether the said accident had occurred due to either the sole negligence of the said deceased or contributory negligence of the deceased as well as the driver of the Bus, as alternately contended by the appellants/APSRTC? 2. Whether the compensation determined by the Tribunal is excessive as contended by the appellants? 3. Whether the Tribunal was not correct in not awarding the determined compensation and restricting the awarded compensation to the amount claimed in the claim petition? 7. POINT No.1 : 7.1 The manner of accident as per the case of the claimants is this: 'On 26.07.2000 Ghani Usman Khan, the deceased, was proceeding on his bicycle on Public Gardens road to go towards Assembly road. On the way, when his cycle had reached a place near the traffic point at Assembly main gate opposite to Ravindra Bharathi, one APSRTC bus bearing registration No. AP 9Z 5714 which was proceeding in the same direction and which was being driven by its driver at a high speed and in a rash and negligent manner had dashed the cycle of the deceased from behind. As a result, the deceased fell down on the road along with the cycle. The back right side tyre of the above said bus ran over him. While being shifted to the Osmania General Hospital, he had succumbed to the grievous injuries sustained in the said accident. His cycle was completely damaged in the accident.' Thus, according to the claimants, the driver of the bus was solely responsible for the accident. Per contra, the manner of accident as per the version stated in the written statement filed by the appellants before the tribunal is this: 'On 26.07.2000 the APSRTC bus was proceeding from VST to Patancheru. The said bus was stopped at Ravindra Bharathi bus stop for the passengers to alight and board the bus. After the said bus was stopped at Assembly Traffic Island on the display of a red signal. After the green signal was shown, the

driver had started the bus and was in the process of negotiating a right turn at a slow speed of 5 to 10 Kms. At that moment, the deceased who was proceeding on his cycle came from behind the bus and had tried to over take the said bus while it was in slow motion and was taking a right turn. In that process he had hit the right side portion of the bus and had fallen down. The deceased's fall is a result of his cycle hitting the right side of the bus. On viewing from the right side rear view mirror such falling down of the cyclist, the driver had instantaneously stopped the bus. Thus the accident was entirely due to the sole negligence of the deceased.' 7.2 As already noted, PW1 is not an eyewitness to the accident. In her evidence, the certified copy of the FIR, the certified copy of the charge sheet, the certified copy of the inquest report, the certified copy of the scene of offence panchanama, the certified copy of the motor vehicle Inspector's report and the certified copy of the post mortem report of the deceased were exhibited as exhibits A1,6,2,3,4 and 5 respectively. There is no dispute in regard to the fact that the deceased had died in the subject accident. The issue is only in regard to the aspect of negligence. Exhibit A1-the certified copy of the FIR would show that it was lodged with the police by PW2, the police constable, who was controlling the traffic at the spot of the accident. In this report, he had stated that while he was discharging his duties, he heard a sound and that on that he had turned to the direction from where the sound had emanated and on that he had noticed that one cyclist was lying under the wheel of the bus and was shouting. In his report he had further stated that he had rushed to the spot and that the driver had stopped the bus at a distance and got down from the bus and had fled away from the scene. Exhibit A6-the copy of the charge sheet on a perusal would show that the investigating officer after investigation had opined that the driver of the bus was responsible for the accident and hence, he had laid a charge sheet against the driver of the bus. PW2 in his affidavit filed in lieu of examination in chief, which was signed by him and filed into the court in November 2002 had supported the case of the claimants that the driver of the bus was responsible for the accident. In his cross examination, he had stated that he did not witness the accident and that he went to the accident spot after hearing the shrieks of a person. As against this evidence on the side of the claimants, the evidence of RW1 requires consideration in juxtaposition. In his affidavit filed in lieu of examination-in-chief, RW1 had affirmed as follows: - 'The bus had started from VST at 08:40 A.M. The bus was packed with passengers beyond its capacity. The said bus was proceeding via Liberty, Secretariat, Birla temple, Ravindra Bharati, Lakdi-ka-pul and so on. The bus was stopped at Birla temple stage to enable the passengers to alight and board the bus. On the signal given by the conductor, he (RW1) had started the bus and the bus was proceeding on its onward journey. The bus was again stopped at traffic signals as a red signal had appeared. After the green signal had appeared, he (RW1) had started the bus and the bus was proceeding slowly as he (RW1) was negotiating a right turn for proceeding to Lakdi-ka-pul. At that time the road in front of the bus was clear. After negotiating a right turn, he (RW1) had heard a thud sound on the hind right side portion of the bus. On hearing the same, he (RW1) had stopped the bus by applying sudden brakes. Before getting down from the bus, he saw through the rear view vision mirror and found that a cycle was lying on the right side of the bus. As the situation became tense, he had proceeded to the police station at the instance of the passengers and public. He had left the bus at the accident spot along with the conductor. At the instance of the police constable he drove the bus to the Saifabad Police Station. He was enlarged on bail on the next day morning.' In his evidence, he had exhibited exhibit B1-the certified copy of judgment in CC.No.643 of 2000. In his cross examination, which is very brief, he had admitted that he did not give complaint to the constable who was present at the spot and that number of persons had gathered at the place of accident and that the accident had occurred at 09:00 A.M., and that he had reached the police station by 09:15 A.M. He had also admitted that he had stopped the bus at a distance of 15 feet away from the place of accident. He had denied the suggestions given in line with the case of the claimants. He had denied the suggestion that in the departmental enquiry, findings were recorded against him as 'not true'. 7.3 Thus, I have referred to the evidence, which was brought on record. I have given earnest consideration to the evidence. No doubt, PW2 is not an eyewitness. But exhibit A6-the certified copy of the charge sheet on a perusal would show that police investigation had revealed that driver of the bus was solely responsible for the accident and hence, the police had charge sheeted him. The judgment of the criminal Court is not binding on the civil Court though the converse is true. Therefore, the driver is acquitted in the calendar case is not a factor sufficient to come to a safe conclusion that the driver of the bus was not responsible for the accident. Be that as it may. According to the pleading in the written statement, it is stated that accident had occurred while the driver was negotiating a right turn at a slow speed of 5 to 10 KMs. It is also stated in the written statement that the deceased who was proceeding on the cycle came from behind and tried to over take the bus and in that process he had hit the right side portion of the bus and therefore, he had fallen down. But, in the examination in chief, RW1 did not state that version. He had only stated that while he was negotiating a right turn at a slow speed, the road in front of the bus was clear and that after negotiating a turn he had heard a thud sound. Therefore, the version that the cyclist came from behind the bus and tried to over take and in that process his cycle had hit the hind portion on the right side of the bus is not stated by RW1 in his evidence. He had only stated that only after hearing a thud sound on the right side hind portion of the bus, he had stopped the bus by applying the brakes and had noticed through the right side rear view mirror that a cycle was lying on the right side of the bus. Further, the most important aspect is that after hearing the sound, if really his version is true, he ought to have stopped the bus at the same spot or at a little distance as even according to him, the bus was moving slowly. But he had admitted in his cross examination and it is also the version of the police constable in the FIR that the bus was stopped at a distance of 15 feet from the accident spot. The bus was stopped at a distance of 15 feet from the spot of the accident would indicate that the driver of the bus was driving the bus fairly at a high speed even while negotiating a turn at the time of accident. Having regard to the manner of accident, I consider that this is a fit case to invoke the principle enshrined in the doctrine *res ipsa loquitur*. Keeping in view the fact that the driver did not affirm in his oral evidence the pleaded defence that the cyclist came from behind and dashed the right side portion of the bus while over taking the bus and also the further fact that the bus was stopped at a distance of 15 feet away from the accident spot, it can safely be held that the driver of the bus alone was responsible for the accident. The version of the driver that as the situation was tense, he proceeded to the police station cannot be countenanced as he did not file an office copy of police complaint, if any, given by him to the police. The evidence on record on an overall consideration does not lead to an inference that the cyclist was either solely responsible for the accident or that he had also contributed to the accident by his contributory negligence. Therefore, having analysed the evidence, this court is of the considered view that there is no reason to interfere with the finding of the tribunal that the pleaded accident had occurred resulting in the death of the deceased due to the rash and negligent driving of the bus bearing No.AP 9Z 5714 by its driver/RW1. Point No.1 is answered accordingly. 8. POINT Nos.2 and 3: 8.1 Coming to the quantum of compensation, the case of the claimants is that the deceased used to work as Man Mazdoor Class-II in Security Printing Press, Mint Compound, Hyderabad and earn Rs.10,000/- per month and contribute his entire earnings for the maintenance of the family. In the evidence of PW1, the copy of Form No.16 of Income Tax Department was exhibited as exhibit A7. Taking into consideration the income mentioned therein at Rs.1,21,012/- per annum including HRA allowance, the tribunal had determined the monthly income of the deceased at Rs.10,000/-. The Tribunal did not make any addition to the actual salary towards future prospects. Further, though in the case on hand the dependents/claimants are ten in number, the Tribunal instead of deducting 1/5th as per the ratio in the decision in *Smt. Sarala Verma and others v. Delhi Transport Corporation* and another had proceeded to deduct 1/3rd from out of the income of the deceased towards personal and living expenses of the deceased. Thus, the Tribunal After deducting 1/3rd towards his living and personal expenses, had taken the balance 2/3rds amount i.e., Rs.80,004/- as the contribution to the family maintenance. Thus, the annual loss of dependency was arrived at Rs. Rs.80,004/-. The tribunal had then taken the multiplier '13' accepting the age of the deceased as 50 years, as the said age was mentioned in exhibit A5-post mortem certificate. The said multiplier is in accordance with the precedential guidance in the decision in *Sarala Verma* referred to supra. Accordingly, the tribunal had arrived at a compensation of Rs.10,57,052/- after adding Rs.15,000/- towards loss of consortium and Rs.2,000/- towards funeral expenses. The tribunal did not award any compensation amounts under the heads 'transport' and 'loss of love and affection' and 'career guidance' though there are minor claimants, who are the children of the deceased. Be that as it may. The claimants are now not claiming more compensation amount than the amount determined by the Tribunal. In their cross objections, the claimants have categorically stated that they are entitled to Rs.10,57,052/- as determined by the tribunal. They are only aggrieved because the tribunal instead of awarding the determined compensation amount, which is just and fair, had awarded only Rs.8 lakhs by restricting the awarded amount to the said amount of Rs.8 lakhs claimed in the claim petition. Having examined the manner and method of determination of compensation adopted by the Tribunal, this Court does not find any reason to accept the contention of the appellants/APSRTC that the Tribunal had erroneously determined the monthly income and the multiplier and that the total compensation determined by the tribunal is excessive. 8.2 The next question is as to whether the claimants are entitled to Rs.10,57,052/- rounded off to Rs.10,57,000/- in stead of Rs.8 lakhs only as awarded by the tribunal. The law on this aspect is well settled in the decision in *Rajesh and*

Dr. V. Rajbir Singh and Ors wherein it was held that the tribunal or the court has a duty, irrespective of the claims made in the application, if any, to properly award a just, equitable, fair and reasonable compensation, if necessary; ignoring the claim made in the application for compensation. Further, in the case of Nagappa v. Gurudayal Singh and others the Hon'ble Supreme Court had held that it cannot be held that there is a bar for the claims tribunal to award compensation in excess of what is claimed, particularly, when the evidence which is brought on record is sufficient to pass such an award. Accordingly, the points are answered holding that the compensation determined by the Tribunal is not excessive and that the Tribunal was not correct in awarding the determined compensation and restricting the awarded compensation to the amount claimed in the claim petition. The claimants are, therefore, entitled to Rs.10,57,000/- and not Rs.8 lakhs as awarded by the tribunal. 9. In the result, the appeal of the APSRTC is dismissed. The Cross Objections (SR) of the claimants are allowed with costs and the claimants are awarded a total compensation of Rs.10,57,000/- (Rupees Ten Lakhs Fifty Seven Thousands only). On the already awarded amount, the tribunal granted interest at 9% per annum simple from the date of the petition till the date of payment or realization. On the enhanced compensation of Rs.2,57,000/- (Rupees Two Lakhs Fifty Seven Thousands only), the claimants are entitled to interest at 7.5% per annum simple from the date of the petition till the date of payment or realization. The enhanced compensation is apportioned as under: 'Rs.32,000/- (Rupees Thirty Two Thousand only) to the 1st claimant, who is the wife of the deceased; Rs.25,000/- (Rupees Twenty Five Thousand only) each to the other claimants 2 to 10. As on the date of filing claim petition in the year 2000, the claimants 2 to 10 are aged 20, 18, 16, 14, 12, 10, 8, 6 and 4 years respectively. Therefore, claimants 2 and 3 are majors even by the date of the claim petition. So far as the major claimants are concerned, they are permitted to withdraw their portion of enhanced compensation on such deposit. The claimants 4 to 7, who must have become majors by now, are permitted to withdraw their respective shares out of the compensation after getting themselves declared as majors by following the procedure established by law, if they are not already declared as majors. The insurance company is directed to deposit before the Tribunal the enhanced portion of compensation i.e., Rs.2,57,000/- (Rupees Two Lakhs Fifty Seven Thousands only) with interest at 7.5% per annum simple from the date of the original petition and also costs before the Tribunal within two months from the date of the receipt of a copy of this judgment. The already awarded compensation or any portion thereof, if not already paid or deposited as per the award of the Tribunal, the same may also be deposited accordingly. The claimants shall pay, as per the procedure, the deficit court fee on the difference compensation i.e., the amount awarded in excess of the amount claimed. The shares of the minor claimants 8 to 10 shall be invested in three separate fixed deposits in their respective names in any Nationalized bank. They are permitted to receive their respective shares of compensation on attaining the ages of majority. Miscellaneous petitions, if any, pending in the appeal and cross objections (SR) shall stand closed. _____ M. SEETHARAMA MURTI, J 1st May, 2015 Vjl 2009 ACJ 1298 (2013) 9 SCC 54 AIR 2003 SC 674 PAGE PAGE 12 MSRM, J CMA_1274_04 & Cross Obj(SR)_3341_05 +, -6; CDmpw, f, +t\$—

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