

**HONOURABLE SRI JUSTICE A. SHANKAR
NARAYANA**

M.A. C.M.A. No.749 OF 2005

JUDGMENT:

Aggrieved of the order, dated 03-03-2003, in O.P. No.142 of 2002, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - District Judge, Adilabad, whereby and whereunder a sum of Rs.2,86,000/- was granted towards compensation with interest at 9% per annum, the instant appeal is preferred by the A.P.S.R.T.C. questioning the liability and also quantum of compensation.

2. The appellant herein - APSRTC (Corporation) is the sole respondent in the O.P. before the Tribunal, while respondent Nos.1 to 5 are claimants.

3. For the sake of convenience, the parties are hereinafter referred to as arrayed in the O.P. before the Tribunal.

4. The facts, in brief, are that on 10-01-1998, while Bhujanna, who is deceased in the instant case, was travelling in the APSRTC bus bearing No.AP-9-Z-8872 from Nirmal to Thallapad Bus stop, when reached bus stop at Thallapad, while Bhujanna was getting down from the bus, driver of the bus moved the bus with sudden jerk,

due to the said rash and negligent act of the bus driver, Bhujanna fell down from the bus and sustained injuries to his person and immediately he was shifted to Government Hospital, Khanapur and from there he was shifted to Gandhi Hospital Secunderabad, where he succumbed to the injuries on 21-01-1998 while undergoing treatment. Hence, the claimants sought for Rs.3,00,000/- towards compensation contending that they are dependants on the deceased, who was 32 years old and earning Rs.3,000/- per month by doing hotel business.

5. The respondent Corporation opposed the claim. The main ground is that there was no rash and negligent driving on the part of the driver of the bus at the relevant time and that the deceased himself fell down from the running bus, and, therefore, it is not liable to pay any compensation to the claimants.

6. The Tribunal framed three (3) issues in the direction of fixing responsibility for the accident. During enquiry, the 1st claimant, besides examining herself as PW.1, also examined one Lachanna, an eyewitness to the accident, as PW.2 and marked Exs.A-1 to A-3. On behalf of the respondent Corporation, no oral or documentary evidence was adduced.

7. The Tribunal, on issue No.1, on appraisal of evidence of PW.2, an eyewitness to the occurrence, and

pointing out that the person who reduced the alleged statement of the deceased into writing as contained in Ex.A-1 - F.I.R., since not examined and since either driver or conductor of the bus were also not examined, the evidence of PW.2 stands unchallenged, and thereby, tendered the finding in favour of the claimants.

8. On issue No.2, taking the age of the deceased as 32 years and his earnings at Rs.2,000/-, worked out the annual income of the deceased at Rs.24,000/- and deducting $\frac{1}{3}$ rd therefrom i.e., Rs.8,000/- ($\text{Rs.24,000/-} \times \frac{1}{3}$) towards personal expenses of the deceased, considering the remainder of Rs.16,000/- ($\text{Rs.24,000/-} - \text{Rs.8,000/-}$) as contribution of the deceased to his family, and by applying multiplier '16', arrived at Rs.2,56,000/- ($\text{Rs.16,000/-} \times 16$) towards loss of dependency, besides granting Rs.15,000/- towards loss of consortium to the 1st claimant, Rs.15,000/- towards loss of estate, and, accordingly, awarded a total sum of Rs.2,86,000/- towards compensation with interest at 9% per annum.

9. It is the aforementioned order, which is under challenge, in the instant appeal by the Corporation, contending mainly on the ground that the deceased was getting down from the running bus and he himself entirely contributed to his death, and, therefore, there was no rash and negligent driving on the part of the driver of the bus, but the Tribunal, somehow, did not properly appreciate the

evidence on record, more particularly, contents of FIR. It is also stated that the Tribunal grossly erred in fixing the income of the deceased at Rs.24,000/- per annum and applying multiplier '16' and that the Tribunal ought to have applied multiplier '14' as per the decision of this Court in

Bhagwandas v. Md. Arif^[1].

10. Heard Sri P. Rajani, learned counsel for the respondent (appellant - APSRTC). None appears for the claimants (respondents).

11. It is contended by the learned standing counsel for the Corporation (appellant) that the contents of F.I.R. would make it abundantly clear that the deceased himself got down from the running bus and sustained injuries resulting in his death and in the presence of such averments in writing, holding otherwise attributing rash and negligent driving to the driver of the bus is erroneous.

12. The order of the Tribunal would make it clear that PW.2, in his evidence, clearly stated that while the deceased was getting down from the bus, since driver of the bus moved it suddenly, the deceased fell down and sustained serious injuries. This part of the evidence was not condemned in his cross-examination. This apart, driver or conductor of the bus was not examined by the Corporation, at least, to

rebut the evidence of PW.2. In such an event, the finding recorded by the Tribunal that the death of deceased occurred only due to rash and negligent driving of the Corporation bus driver cannot be disturbed.

13. Coming to the other ground, it is no doubt true that there is no documentary evidence that the deceased was earning Rs.3,000/- per month. The Tribunal fixed monthly earnings of the deceased at Rs.24,000/- per annum and deducted 1/3rd therefrom and applied multiplier '16', since the deceased was aged 32 years, and accordingly arrived at Rs.2,56,000/- towards loss of dependency. The other sums of Rs.15,000/- towards loss of consortium to the 1st claimant, Rs.15,000/- towards loss of estate cannot be faulted with and also apportionment of the compensation between the claimants. In fact, the Tribunal ought to have granted funeral expenses, which the Tribunal did not advert to at all.

14. However, the Tribunal awarded interest at 9% per annum, which warrants interference of this Court in view of the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[2], and, therefore, the rate of interest is reduced to 7.5% per annum through out.

18. Accordingly, the appeal is dismissed, modifying

the impugned award passed by the Tribunal by reducing the rate of interest alone, as indicated above, and confirming the same in all other aspects. There shall be no order as to costs.

19. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

A. SHANKAR NARAYANA, J

February 11, 2015.

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[\[1\]](#) 1987 ACJ 1052

[\[2\]](#) 2013ACJ1403 = 2013(4)ALT35