

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A.No.153 OF 2013

JUDGMENT:

This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, challenging the judgment and award dated 13.9.2009 passed in O.P.No.132 of 2009 on the file of the Chairman, Motor Vehicle Accident Claims Tribunal-cum-XX Additional Chief Judge, City Civil Court, Secunderabad.

2. The parties to this appeal will hereinafter be referred to as they are arrayed before the Tribunal, to avoid confusion.

3. The facts leading to filing of the appeal are briefly as follows: On 08.11.2008, one M.Ramana was proceeding on his motor cycle along with his relative, who is pillion rider, from Karkhana to secunderabad. When they reached near Jubilee Bus Station out-gate, the driver of Andrews School bus bearing No.AP 11V 8892 had driven the same in a rash and negligent manner and dashed against the motor cycle. The accident was occurred due to the rash and negligent driving of the driver of the crime bus against whom the Station House Officer, Marredpally Police Station registered a case in Crime No.178 of 2008 under Section 304A IPC. Immediately after the accident, Ramana (hereinafter referred to as, the deceased) was shifted to Gandhi Hospital, Secunderabad, where he died while undergoing treatment. By the time of the accident, the deceased was aged 30 years and used to earn Rs.6,000/- per month as a driver. The first petitioner is the wife, petitioner Nos.2 and 3 are the children, and petitioner Nos.4 and 5 are parents of the deceased, and they are all dependants on the income of the deceased. The crime bus, which belongs to the first respondent, was insured with the second respondent with effect from 11.6.2008 to 10.6.2009 vide Policy Cover Note No.108000229153; therefore, the respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioners.

4. The first respondent filed counter denying all the averments made in the petition including the manner of the accident. The accident occurred due to the rash and negligent driving of the driver of the motor cycle by the deceased and there was no negligence on the part of the driver of the bus. The bus bearing No.AP 11V 8892, which belongs to this respondent, was validly insured with the second respondent. Therefore, the second respondent alone is liable to pay compensation, if any, to the petitioners. Hence, the petition against this respondent is liable to be dismissed.

5. The second respondent filed written statement denying all the averments made in the petition including the manner of the accident, age and income of the deceased. The accident occurred due to the rash and negligent driving of the motor cycle by the deceased and as well as the driver of the bus. The driver of the bus was not having valid and effective driving licence as on the date of the accident; therefore, there is no obligation on the part of this respondent to indemnify the liability of the first respondent. The amount of compensation claimed by the petitioners, under various heads, is highly excessive and exorbitant. Hence, the petition may be dismissed so far as this respondent is concerned.

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

1. Whether the accident occurred owing to the rash and negligent driving of the bus bearing No.AP 11V 8892 by its driver?
2. Whether the petitioners are entitled to any compensation, if so, what amount and against whom?
3. To what relief?

7. During the course of trial, on behalf of the petitioners, P.Ws.1 to 4 were examined and Exs.A1 to A14 were marked. On behalf of the

respondents, no oral evidence was adduced but Ex.B1 was marked on behalf of the second respondent.

8. On appraising the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident was occurred due to the rash and negligent driving of the driver of the bus, which resulted in the death of the deceased and allowed the petition by awarding a compensation of Rs.11,41,000/- with interest at 7% per annum from the date of the petition till deposit. Feeling aggrieved by the judgment and award of the Tribunal, the second respondent—Insurance company preferred the present appeal.

9. The contention of the learned counsel for the second respondent is that the Tribunal committed error while adopting the multiplier as '18'. She further submitted that the Tribunal has not considered the medical certificate produced by the petitioners while determining the multiplier. ***Per contra***, learned counsel for the petitioners submitted that basing on the oral and documentary evidence available on record, the Tribunal arrived at a conclusion that the deceased aged about 30 years and adopted the multiplier as '18'. He further submitted that there are no grounds much less valid grounds to interfere with the well considered judgment and award of the Tribunal.

10. Basing on the rival contentions, the point that arises for consideration in this appeal is:

Whether the Tribunal has committed any error while adopting the multiplier as '18'?

Point:

11. Basing on the testimony of P.Ws.1 and 2 and Exs.A1, A2, A4, A5 and A14, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the crime bus, which resulted in the death of the deceased. The respondent has not adduced rebuttal evidence. The Tribunal has assigned cogent and valid reasons to its findings. There are no grounds much less valid

grounds to upset the finding of the Tribunal on issue No.1. Hence, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the crime bus, which resulted in the death of the deceased.

12. The predominant contention of the learned counsel for the second respondent is that the Tribunal has applied wrong multiplier i.e., '18'. In the petition, the age of the deceased is mentioned as 30 years. As per the testimony of P.W.1, her husband was aged 30 years by the time of his death. The learned counsel for the second respondent submitted that the age of the deceased is shown as 35 years in Ex.A1 F.I.R. A perusal of Ex.A1 reveals that the pillion rider (relative of the deceased) lodged a complaint to the concerned Police. In the complaint, the age of the deceased is not mentioned. It seems that the Police have mentioned the age of the deceased as 35 years. In the accident register, the age of the deceased is shown as 35 years whereas in the inquest panchanama the age of the deceased is mentioned as 30 years. As rightly pointed out by the learned counsel for the second respondent, there is some discrepancy with regard to the age of the deceased. When two views are possible, basing on the material available on record, the Tribunal or the court has to follow the view, which is beneficial to the claimants, as the Motor Vehicles Act is a piece of social beneficial legislation. Having regard to the facts and circumstances of the case, I am of the considered view that the deceased may be aged about 30 – 35 years. The Tribunal ought not to have adopted the multiplier as '18' even if the age of the deceased was taken as 30 years. The correct multiplier that would be adopted for the age of 30 years is '17'.

13. Basing on the oral testimony of P.W.3 and Ex.A9 (salary certificate), the Tribunal arrived at a conclusion that the deceased used to earn Rs.6,500/- per month. The Tribunal has deducted 1/5th of the income towards personal expenses of the deceased, as the claimants

are five in number. Thus the contribution of the deceased to the family members would come to Rs.5,200/- per month and Rs.62,400/- per annum. By adopting the appropriate multiplier '17', the loss of dependency comes to (Rs.62,400 X 17=) Rs.10,60,800/- but not Rs.10,80,000/- as awarded by the Tribunal. The Tribunal has awarded an amount of Rs.61,000/- under the other heads, which is just and reasonable; therefore, it is not a fit case to interfere with the compensation awarded under the other heads. The total compensation for which the petitioners are entitled to is Rs.10,60,800 + Rs.61,000 = Rs.11,21,800/-.

14. Having regard to the facts and circumstances of the case, I am of the considered view that the Tribunal has committed error by adopting the multiplier '18' instead of correct multiplier '17'. Accordingly, the point is answered.

15. In the result, the appeal is allowed in part by reducing the compensation from Rs.11,41,000/- to Rs.11,21,800/-. The respondent Nos.1 and 2 shall jointly and severally pay the same with interest at 7% per annum from the date of the petition till the date of realization. There shall be no order as to costs in this appeal. Miscellaneous petitions, if any, pending in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 20.08.2015.

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