HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

C.M.A. Nos.1802 AND 1919 OF 2004

COMMON JUDGMENT:

C.M.A. No.1919 of 2004 is preferred by the petitioner - claimant having got dissatisfied with the award of Rs.10,15,000/- as compensation, by the order, dated 12-04-2004, by the learned Chairman, Motor Accidents Claims Tribunal - cum - District Judge, Vizianagaram for short 'Tribunal'), in M.O.P. No.492 of 2002, laid under Section 166 of the Motor Vehicles Act, 1988 as against the claim of Rs.20,00,000/- for the death of her husband Santharaman Rajasekhar in the accident. C.M.A. No.1802 of 2004 is preferred against the same order by respondent Nos.2 and 3 viz., A.P.S.R.T.C., in the M.O.P. stating that the compensation awarded is on higher side and the contributory negligence ought to have fixed at 50:50 instead of 80:20 on respondent No.1 - driver of the bus that involved in the accident, and
A. Santharaman Rajasekhar, who died in the accident, respectively.

2. Appellant, wife of A. Santharaman Rajasekhar, in C.M.A. No.1919 of 2004, who is respondent No.1 in C.M.A. No.1802 of 2004, is the petitioner in the M.O.P. before the Tribunal, while respondent No.1 (driver of the A.P.S.R.T.C. bearing No.AEZ-3452 that involved in the accident) in C.M.A. No.1919 of 2004, who is respondent No.4 in C.M.A. No.1802 of 2004 is respondent No.1, respondent Nos.2 and 3 (A.P.S.R.T.C., Depot Manager, Jeedimetla Bus Depot and its Managing Director

respectively - Corporation) in C.M.A. No.1919 of 2004, who are appellants in C.M.A. No.1802 of 2004, are respondent Nos.2 and 3, respectively, respondent Nos.4 and 5 (parents of Santharaman Rajasekhar) in C.M.A. No.1919 of 2004, who are respondent Nos.2 and 3 in C.M.A. No.1802 of 2004, are respondent Nos.4 and 5 respectively.

3. However, respondent Nos.5 to 8 in C.M.A. No.1802 of 2004 and respondent Nos.6 to 9 in C.M.A. No.1919 of 2004, who are brothers and sisters of Santharaman Rajasekhar, are brought on record as legal representatives of his father (respondent No.3 in C.M.A. No.1802 of 2004 and respondent No.5 in C.M.A. No.1919 of 2004) since he died during the pendency of these appeals.

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

5. Facts in brief are that on 18-01-2002, the deceased Santharaman Rajasekhar started on his motorcycle from Tulip Manohar Hotel, Begumpet to go to his house, and when he reached Plaza Heights Road, Secunderabad, at about 4-30 p.m., APSRTC bus bearing registration No.AEZ-3452, driven by respondent No.1 in a rash and negligent manner at high speed, hit the motorcycle, due to which, Rajasekhar fell down and died instantly. Usual formalities have been observed by the Station House Officer, Begumpet Police Station and registered a case in Crime No.15 of 2002 for the offence punishable under Section 304-A of Indian Penal Code against the respondent No.1.

6. The petitioner, who is wife of the deceased, while claiming that the deceased used to work as Assistant Manager in Flight

Catering at Tulip Manohar, Begumpet, Secunderabad, earning Rs.11,450/- per month, states that on account of his death, she not only lost her dependency, but also all pleasures of life at her prime youth. It is also according to her that her parents-in-law were completely dependant on the earnings of the deceased, and sought Rs.20,00,000/- as compensation against respondent Nos.1 to 3.

7. Respondent No.1, who is driver of the APSRTC bus that involved in the accident, remained *ex parte* in the M.O.P. before the Tribunal.

8. Respondent No.3, who is Managing Director of APSRTC, filed his counter and the same was adopted by respondent No.2, who is Depot Manager of Jeedimetla Bus Depot, APSRTC, by filing a memo.

9. Respondent No.3 stated that the statement made by respondent No.1, driver of the APSRTC bus, and the eyewitnesses to the occurrence would reflect that when the APSRTC bus reached near Plaza Bus Depot, the deceased came from Begumpet side in the opposite direction, took left turn at high speed and overtook the bus, which was alighting at the bus stop, and unable to control his speed, hit the bus at front side middle portion, due to which he sustained injuries. Thus, claiming that only due to rash and negligent driving of the deceased, the accident had occurred, sought to dismiss the claim petition.

10. Respondent No.4, father-in-law of the petitioner, filed a counter with identical grounds averred by the petitioner and the same was adopted by respondent No.5, mother-in-law of the

petitioner, by filing a memo. They sought apportionment of the compensation to be awarded by allowing 1/3rd share each to them.

11. The Tribunal, on the aforesaid pleadings, framed four (4) issues in the direction of fixing responsibility for the accident. During enquiry, petitioner, besides examining herself as PW.1, examined one N.R. Syamasundararao, an eyewitness to the occurrence as PW.2, and A. Ramanujam, Assistant Manager, Human Resource Development Authority, Hyderabad, as PW.3 to prove the monthly earnings of the deceased, besides marking Exs.A-1 to A-5 and X-1 and X-2 respectively. On behalf of respondent Nos.1 to 3, respondent No.1, driver of the APSRTC bus that involved in the accident, stepped into the witness box and examined himself as RW.1 and marked Ex.B-1 certified copy of the judgment in C.C. No.328 of 2002.

12. In the light of the above pleadings, grounds and the arguments advanced by the learned counsel on either side, the points that arise for consideration are:

1. Whether the finding recorded by the Tribunal in fixing the liability at 80:20 on the part of the driver of the APSRTC bus and the deceased, respectively, can be sustained?

2. Whether the compensation awarded by the Tribunal is excessive as contended by the APSRTC or far below than the just and adequate compensation as contended by the petitioner?

3. Whether the rate of interest awarded by the Tribunal can

be sustained?

Point No.1:

13. Learned standing counsel for the APSRTC would submit that though there is evidence of RW.1 establishing in unmistakable terms that the deceased himself contributed to the accident as the bus was not actually plying, but it was alighting, still, the Tribunal went wrong in fastening the liability on the deceased only to the extent of 20% instead of 50%. Whereas, learned counsel for the petitioner would submit that, in fact, the Tribunal disbelieved the evidence of RW.1 by analysing as per the evidentiary rule, in which case, the Tribunal ought not to have recorded the finding that there was contributory negligence to the extent of 20% on the part of the deceased.

14. On this aspect of the case, the Tribunal analytically examined the evidence of RW.1 and the evidence of PW.2 and the documentary evidence through Exs.A-3 and A-5, which are the certified copies of Motor Vehicle Inspector's Report, Charge Sheet and First Information Report respectively, and disbelieving the evidence of RW.1, by observing that assertion of RW.1 that the bus was actually alighting at the bus stop gets falsified and, thereby, arrived at that there was contributory negligence to the extent of 80% on the part of RW.1 and the rest on the part of the deceased. The observations in that regard have been made in paragraph No.14 of the impugned order. The Tribunal also placed reliance on the decisions of the Hon'ble Apex Court in **Indrani Raja Durai and others v. Madras Motor & General Insurance Co.** [1996 ACJ 366 (SC)], and also this Court in **A.P.S.R.T.C. v. Gayapu Roopavathi and others,** [1994 ACJ 677] in arriving at

that conclusion and, thus, recorded the finding fixing liability on RW.1 and the deceased at 80:20, which is sought to be set aside by both parties contending that there was complete negligence on the part of RW.1 that occasioned the accident, and, therefore, to fix the entire liability on RW.1, whereas the Corporation contends that 50% liability has to be fixed as against 20% fixed on the deceased.

15. As seen from the material on record, admittedly, certified copy of panchanama is not filed and the rough sketch of scene of offence, which would be drawn along with scene of occurrence, is also not filed besides non-examination of author of the panchanama. Unless the scene of occurrence panchanama and rough sketch of scene of offence panchanama are filed and exhibited, certainly, it would be difficult to apportion the liability in exactitude. Further, the finding recorded by the Tribunal is unless shown to be perverse, the appellate Court would not interfere with the said finding. When viewed in that direction, certainly, there is nothing on record to substantiate the respective stands put forth by the parties. Therefore, that finding has to be upheld rejecting the submissions of both sides. Point No.1 is answered accordingly.

POINT Nos.2 AND 3:

16. The Tribunal in determining the compensation taking into consideration age of the deceased as 30 years and as regards earnings of the deceased basing on Ex.X-1, which relates to salary of the deceased for the month of December 2001, taken the net salary of Rs.10,543/- by referring to the evidence of PW.3, who was Assistant Manager in Human Resource Development Authority, Hyderabad, and fixed his annual contribution to the family at Rs.76,800/-, applied multiplier ‘16’ and worked out the loss of dependency at Rs.12,28,000/-. Since the Tribunal recorded

a finding that the deceased contributed to the extent of 20% as regards liability, 20% amount was deducted from the total loss of dependency worked out and arrived at Rs.9,83,000/- (Sic. Rs.9,82,400/-) towards loss of dependency. The Tribunal has also granted Rs.15,000/- towards consortium, Rs.15,000/- towards loss of estate and Rs.2,000/- towards transport charges. Thus, worked out the total compensation at Rs.10,15,000/-, out of which Rs.9,15,000/- was awarded to the petitioner and Rs.50,000/- each to respondent Nos.4 and 5, parents of the deceased, directing respondent Nos.1 to 3 to pay the same jointly and severally with interest at 9% per annum.

17. Scanning of evidence of PW.3 would give a definite indication that the deceased was drawing a monthly salary of Rs.11,450/- as per Ex.X-1. Though, PW.3 was examined, nothing was brought out in his cross-examination to doubt the authenticity of Ex.X-1, and, therefore, evidence of PW.3 as well as Ex.X-1 - salary certificate of the deceased cannot be discarded as rightly did so by the Tribunal.

18. Now the question is what should be the deduction from the monthly salary? Whether the carry home salary has to be considered or gross salary for the purpose of determination of compensation?

19. The law is well settled that gross salary has to be taken into consideration by making statutory deductions. The Hon'ble Apex Court in **Kalpanaraj and others v. Tamil Nadu State Transport Corporation** referring to its earlier decision in **National Insurance Company Limited v. Padmavathy** and the decision of this Court in **S. Narayanamma v. Government of India** held that

the Tribunal can make only statutory deductions, such as income tax and professional tax and any other contribution, which is not repayable by the employer, from the salary of the deceased person while determining the monthly income for computing the dependency compensation; and any contribution made by the employee during his lifetime, form part of the salary and they should be included in the monthly income, while computing the dependency compensation.

20. In the instant case, admittedly, evidence of PW.3 is silent as to what was the amount deducted towards income tax. Even Ex.X-1 does not disclose as to any deduction made at the source level. It is also not clear from the evidence of pw.3 nor any documentary evidence is filed by the petitioner to show that employer of the deceased was tendering salary having already deducted the tax. In such a situation, learned counsel for the petitioner submits that as a rule, 10% of the amount be deducted towards income tax, keeping in view the salary of the deceased at Rs.11,450/- per month. No material is placed to show what was the initial exemption, on which no tax is required to be paid and slabs at 10%, 20% and 30% income to be taxed during the assessment year 1999-2000. In such an event, it would be appropriate to deduct 10% towards income tax from the annual income of the deceased that would be arrived at. Ex.X-1 would show that a sum of Rs.80/- being deducted towards professional tax, Rs.113/- towards E.S.I., and Rs.120/- towards food, which works out to Rs.313/-. When he same is deducted from the gross salary of Rs.11,450/-, the remainder works out to Rs.11,137/- (Rs.11,450/- - Rs.313/-) per month and Rs.1,33,644/- per annum. 10% thereof works out to Rs.13,364/- (Rs.1,33,644/- x 10%) and when the same is deducted towards income tax from Rs.1,33,644/-, it works out to Rs.1,20,280/-. Since the petitioner and parents of the deceased, total three members, are dependants on the deceased, 1/3rd has to be deducted towards personal expenses of the

deceased. When 1/3rd is deducted from Rs.1,20,280/-, it works out to Rs.80,187/- (Rs.1,20,280/- - Rs.40,093/- (1/3)] per annum towards contribution of the deceased to his family.

21. Since the Tribunal has recorded a finding that the deceased was 30 years old on the date of accident and the Corporation has not shown anything contra, age of the deceased is taken as 30 years confirming the finding recorded by the Tribunal concerning age of the deceased on the date of accident. As per the decision of the Hon'ble Apex Court in **Sarla Verma v. Delhi Transport Corporation,** for the age group of the deceased i.e. between 26 and 30 years, the relevant multiplier is '17'. When the multiplicand of Rs.80,187/- is multiplied with multiplier '17', it works out to Rs.13,63,179/- towards loss of dependency.

22. Since the deceased died at his prime youth, concerning future prospects, in view of the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**, 50% of loss of dependency has to be added towards future prospects. 50% of Rs.13,63,179/-, works out to Rs.6,81,589/- and, thus, total loss of dependency works out to Rs.20,44,768/- (Rs.13,63,179/- + Rs.6,81,589/-). Since it is held that there is contributory negligence on the part of the deceased at 20%, when the same is deducted from the total loss of dependency, it works out to Rs.16,35,814/- [Rs.20,44,768/- - 20% (Rs.4,08,954/-)]. The petitioner is also entitled to Rs.50,000/- towards conventional sum as per the decision of the Hon'ble Apex Court in **Ramilaben Chinubhai Parmar and others v. National Insurance Company and others.**

23. Thus, the petitioner is entitled to a total compensation of Rs.16,85,814/- (Rupees sixteen lakhs eighty five thousand eight hundred and fourteen), as against Rs.10,15,000/- awarded by the

Tribunal, and the same is accordingly awarded. Out of which, respondent Nos.4 and 5, who are parents of the deceased, are entitled to Rs.85,000/- (Rupees eighty five thousand) each. The petitioner and respondent Nos.4 and 5 are entitled to interest at 7.5% per annum, as against 9% granted by the Tribunal, on the entire compensation, from the date of petition till realisation, as per the decision of the Hon'ble Apex Court in **Rajesh's Case (Supra).** Point Nos.2 and 3 are, accordingly, answered.

24. Accordingly, C.M.A. No.1919 of 2004 is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation and reducing the rate of interest, as indicated above. Consequently, C.M.A. No.1802 of 2004 is dismissed. There shall be no order as to costs.

25. As a sequel thereto, Miscellaneous Applications, if any, pending in these appeals stand disposed of.

A. SHANKAR NARAYANA, J

July 3, 2015.

PV