

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No. 763 of 2005

JUDGMENT:

Having dissatisfied with the award of Rs.1,77,040/- as compensation by the order dated 05.01.2005 in O.P. No.91 of 2001 on the file of the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-I Additional District Judge, Medak at Sangareddy (for short 'the Tribunal') as against the claim laid for Rs.3,00,000/- under Section 166 of the Motor Vehicles Act, 1988, the petitioners preferred the instant appeal seeking the balance amount as compensation.

2. The appellants herein are the claimants before the Tribunal, while the respondent Nos.1 and 2, who are the owner and insurer of the Tourist Bus bearing registration No.KA 05B 9797 respectively, were respondent No.1 and 2 in the original petition.

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

4. The facts, in brief, are that on 24.09.2000, one Khaja Moinuddin, whose wife is petitioner No.1, son is petitioner No.2 and parents are petitioner Nos.3 and 4, boarded the bus bearing registration No.KA 05B 9797 at Bombay in order to come down to Zaheerabad, which is nearer to his native village Dappur. When it reached near Sholapur at about 3.45 A.M. on 25.09.2000, from Pune and after crossing Sholapur and was coming towards Hyderabad, since the driver of the vehicle drove it at high speed and in a rash and negligent manner, lost control over the vehicle and the bus turned upside down causing injuries to the passengers of the bus and the instant death of Khaja Moinuddin. The petitioners claimed that the deceased was 23 years old on the date of accident and mason by profession and was earning Rs.4,500/- per month at Bombay and other places. He was a skilled mason. Therefore, the claimants sought Rs.3,00,000/- towards compensation against respondents 1 and 2, who are the owner and insurer of the accident vehicle.

5. Respondent No.1 remained *ex parte* before the Tribunal and respondent No.2 opposed the claim by raising various pleas, which need no advertence, since the instant appeal is filed for enhancement of compensation and admittedly the

findings are not challenged by the insurance company.

6. Based on the above pleadings, the Tribunal framed the following issues about responsibility for the accident.

“(i) Whether the accident took place due to the rash and negligent driving of the driver of the bus bearing No.KA 05 9797?

- i. What is the quantum of compensation the claimants are entitled to, against the respondents?
- ii. To what relief?”

7. During enquiry, petitioner No.1 got examined herself as P.W.1 besides examining one Mohd. Ismail, eye witness to the accident, as P.W.2 and marked exhibits A.1 to A.7. On behalf of respondent No.2, no one was examined, but the copy of insurance policy was marked as exhibit B.1.

8. The Tribunal, on appraisal of evidence of P.W.2 supported by exhibits A.1 to A.7 held that due to rash and negligent driving of the driver of the bus, the accident has occurred and accordingly, answered issue No.1 in favour of the petitioners. On issue No.2, the Tribunal taking the age of deceased as 27 years basing on exhibit A.4, certified copy of P.M.E.Report and disbelieving the stand of the petitioners that the deceased used to earn Rs.150/- per day and observing that under the Minimum Wages Act, fixed the income of the deceased as Rs.1,200/- per month, deducted 1/3rd towards personal expenses of the deceased which comes to Rs.800/- and the annual dependency of the claimants comes to Rs.9,600/- (800 x 12) and applied multiplier '17.40' as per the decision of this Hon'ble Court in **Bhagwandas v. Mohd. Arif** determined the loss of dependency at Rs.1,67,040/- and granted Rs.5,000/- towards loss of Consortium and Rs.5,000/- towards loss of estate and, thus, granted a total sum of Rs.1,77,040/- with interest at the rate of 9% per annum.

9. Dissatisfied with the award of compensation on the ground that meager amount was awarded, the instant appeal is preferred by the appellants contending in the grounds that the Tribunal ought to have taken the age of the deceased as 23 years, but taken as 27 years and that the Tribunal was not right in taking Rs.40/- as daily wage as against Rs.150/- claimed by them and even for agricultural labourer during the year of accident the minimum wage

was Rs.70/- per day and that the Tribunal was not right in granting Rs.5,000/- towards consortium and is also not correct in awarding Rs.5,000/- towards loss of estate instead of Rs.15,000/- and therefore, sought to grant the balance amount.

10. Heard Sri P.Sriharinath, learned counsel for the appellants and Sri G.Ramachandra Reddy, learned counsel for respondent No.2/United India Insurance Company Limited. The appeal was dismissed for default against respondent No.1/owner of the bus on 03.01.2012. However, dismissal of the appeal for default against him is of no consequence to decide the quantum of compensation, in view of the decision of a Division Bench of this Court in ***Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others***, wherein it is held that:

"If the Claims Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged either by the Insurance Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore there cannot be any bar to decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle to the extent of the statutory liability of the Insurance Company. But the quantum of compensation cannot be decided over and above the statutory liability of the Insurance Company in the absence of the owners, but the question of the statutory liability of the Insurance Company survives for consideration at the appellate stage."

11. The learned counsel for the appellants contends that the deceased was a skilled mason and earning Rs.40/- per day as daily wage in the year 2000, was incorrect, and even the conventional amount granted by the Tribunal was very meager, and therefore, ought to have taken the daily wage at Rs.150/- as projected by the appellants.

12. It is the submission of the learned counsel for respondent No.2 that the Tribunal made a definite observation that under the Minimum Wages Act, the Tribunal determined the income of the deceased at Rs.1,200/- per month, and, therefore, that finding cannot be disturbed. The amount of compensation granted by the Tribunal is just and adequate, and hence, to maintain the order under challenge.

13. There is no dispute in regard to any aspect except the income of the

deceased. It is not in dispute that the deceased was working at Bombay and other places. It is also not in dispute that he was a mason by profession. The work of masonry will require professional talent. This apart, the petitioners in their grounds of appeal have specifically mentioned in ground No.6 that even the daily wage for an agricultural labourer was Rs.70/- per day, for which nothing is forthcoming from the side of respondent No.2 by way of filing a circular or memo issued by the concerned authorities to show the revised minimum wage in the year 2000 for a skilled labourer or a skilled mason or unskilled mason. In that view of the matter, it is reasonable to take the daily wage of the deceased as Rs.75/-, even leaving five days in month taking 25 days as working days, when the amount of Rs.75/- per day is taken, it works out to Rs.1,875/- per month. Since the petitioners are numbering four (4), the dependency is to be worked out by deducting $\frac{1}{4}$ th as per the decision of the Hon'ble Apex Court in ***Sarla Verma & others v. Delhi Transport Corporation and another***. Thus, the deduction of $\frac{1}{4}$ th works out to Rs.468/- and if the same is taken, the remainder works out to Rs.1,407/- per month and per annum it works out to Rs.16,884/-. The relevant multiplier as per the very same decision is '17'. Therefore, when the multiplier '17' is applied, it works out to Rs.2,87,028/-. The Tribunal no doubt awarded Rs.5,000/- towards loss of consortium, but is enhanced to Rs.15,000/- and another Rs.15,000/- towards loss of estate as against Rs.5,000/- granted by the Tribunal. The Tribunal has not granted any amount towards funeral expenses. Therefore, Rs.5,000/- is awarded. Thus, the total conventional sum comes to Rs.35,000/-. Therefore, the petitioners are entitled to total compensation of Rs.3,22,028/-. It is no doubt true that the claim is for Rs.3,00,000/- only, but when the compensation determined is just and adequate; certainly, the petitioners cannot be deprived of the same when the just and reasonable amount even if it exceeds the claim in view of the decisions of the Hon'ble Apex Court in ***Laxman v. Divisional Manager, Oriental Insurance Company Limited*** and ***Rajesh and others v. Rajbir Singh and others***. Therefore, the appeal is allowed granting a sum of Rs.3,22,028/-. Even on enhanced amount, interest at 7.5% per annum is granted from the date of petition till realization, as per the decision of the Hon'ble Apex Court in ***Rajesh's*** decision (Supra 5).

14. In the result, the appeal is allowed, and the award and decree dated 05.01.2005 passed by the Tribunal in

O.P. No.91 of 2001 is modified, enhancing the compensation to Rs.3,22,028/- (Rupees Three lakhs twenty two thousand and twenty eight only) from Rs.1,77,040/-, with interest at the rate of 7.5% from the date of petition till realization. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

Date: **25.02.2015**

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HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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Dt. 25.02.2015

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