HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA.No.115 OF 2013

JUDGMENT:

Dissatisfied with the award of Rs.15,56,076/- towards compensation, as against Rs.40,00,000/-, claimed under Section 166 of the Motor Vehicles Act, 1988, read with Rule 455 of the A.P. Motor Vehicle Rules, 1989, seeking enhancement of the same, claimants preferred this Civil Miscellaneous Appeal against the order dated 16-10-2012, in OP. No.424 of 2011, on the file of Chairman, the Motor Accidents Claims Tribunal-cum-District Judge, Guntur.

2. The appellants herein are the petitioners, while respondent is the APSRTC who is the owner of bus bearing No.AP 11Z 4370, in the O.P. before the Tribunal.

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

4. The facts, in brief, are that the petitioners who are the legal heirs of the deceased Vutla Laxmi filed the OP claiming compensation of Rs.40 lakhs for her untimely death in road accident that occurred on 16.01.2011 at about 5-00 P.M., while the petitioners and the deceased were coming from Vetapalem to Epurupalem Village on

Hero Honda Motorcycle bearing No.AP 27AG 4081, when they reached near Kurri Kotaiah memorial Hall, Epurupalem Village, Chirala Mandal, Prakasam District, one RTC bus bearing No.AP 11Z 4370 belonging to the respondent-Corporation, came from Bapatla towards Chirala side, driven by its driver in rash and negligent manner at high speed and dashed right side of the motorcycle in opposite direction, as a result, the deceased-Laxmi fell down from the motorcycle towards right side and the bus hit her and dragged her to some distance, as such, Laxmi sustained grievous injuries all over the body and died while shifting to hospital. The petitioners have fallentowards left side of the motorcycle and sustained simple injuries. Thus, the accident occurred due to rash and negligent driving of the driver of the RTC bus. A crime No.7/2011 is also registered against the driver of the RTC bus under Section 304A IPC. The deceased-Laxmi was hale and healthy at the time of accident aged 34 years, working as Hindi Pandit at M.P.U.P.School of Raju Bangarupalem village, Chinaganjam Mandal, Prakasam district and earning Rs.17,500/- per month. As the accident occurred due to rash and negligent driving of the driver of the RTC bus, the respondent is liable to pay compensation.

5. The respondent-Corporation filed counter before the Tribunal stating that the Tribunal has no jurisdiction as the

accident occurred at Epurupalem, Chirala Mandal and the petitioners and Laxmi are residents of Chirala and the Chirala Rural Police registered the crime against the driver of the RTC bus, which belongs to Chirala Depot. It is also further contended that the accident occurred due to negligent driving of the driver of the motorcycle but not due to negligent driving of the driver of the bus since four persons were traveling on the motorcycle along with heavy bags of luggage, the rider lost his balance and fell down on the road side. It is further stated that the 1st petitioner is working as ACTO, Bapatla, as such, he is not dependant upon the earnings of his wife Laxmi and that the claim of the petitioners is excessive. The respondent also denied the manner of accident, age, income and profession of the deceased Laxmi.

6. The Tribunal basing on the evidence of PWs.1 to 3 and Exs.A1 to A8, X1 and X2 and also basing on the evidence of RWs.1 and 2 and Ex.B1, granted compensation of Rs.15,56,076/- with interest at 7.5% p.a., holding that the accident occurred only due to composite negligence of PW1 and RW1 and thereby attributed 50% negligence to each.

7. Not satisfied with the quantum of compensation awarded by the Tribunal the petitioners who are the claimants filed the present appeal.

8. Heard both sides.

9. Learned counsel for the appellants submits that the Tribunal erroneously awarded the compensation attributing composite negligence on the part of the motorcycle on which the deceased was traveling, and the driver of the RTC bus. He also submits that because of triple riding, negligence cannot be attributed to the driver of the motorcycle. He also submits that the Tribunal only on the ground of triple riding, came to a conclusion that there is composite negligence on the part of rider of the motorcycle which is erroneous and there cannot be such presumption and that for triple riding, the rider of the motorcycle can be penalized under Section 128(1) of the Motor Vehicles Act, 1988. In support of his contention he relied on the Judgments in ***Kumari K.Pushpa Latha v. E.Murali Manohar Rao and another***[1]***; D.Vasheeda and others v. V.Babakka and others***[2]***, and in United India Insurance Company Limited v. Chendri Ramaiah and others***[3]***.*** He also submits that the salary of the deceased is taken as per Ex.A7-salary certificate of the deceased and that there cannot be further deduction towards income-tax, as the amount that is received by the deceased is presumed to be the income after deduction of income tax. As such, the salary shown in Ex.A7 presumed to be the salary of the deceased after deduction of income

tax. In support of this contention he relied on the Judgment in ***Vimal Kanwar and others v. Kishore Dan and others***[4]***.*** He also submits that the Tribunal has granted only Rs.5,000/- towards loss of estate; Rs.10,000/- towards loss of consortium. But as per the Judgment reported in ***Rajesh and others v. Rajbir Singh and others***[5], the Apex Court awarded an amount of Rs.1 lakh towards consortium; Rs.1 lakh towards loss of estate and Rs.25,000/- towards funeral expenses. As such, pleaded to take the said Judgment into consideration while granting compensation under the above heads.

10. On the other hand Sri P.Durga Prasad, learned counsel for the respondent Corporation submits that the Tribunal has granted just compensation basing on the evidence of RW1 and PW1 by attributing composite negligence to the drivers of both the vehicles i.e. motorcycle and RTC bus and that the Judgment relied on by the appellant with regard to Section 128(1) of the M.V.Act, has no application since the Tribunal basing on the evidence of RW1 has taken reasonable view and the same cannot be disturbed in the appeal just because different view is possible. He also submits that the actual income should be taken after deduction of income tax only and that Ex.A7-salary certificate of the deceased does not indicate that any income-tax is deducted in the

salary of the deceased, as such Tribunal has rightly deducted 10% deduction after deducting standard deduction of Rs.1,00,000/- and pleaded that the finding of the Tribunal cannot be disturbed and no interference is called for.

11. In this case it is to be seen that the Tribunal has scrutinized the evidence of PW1 and RW1 and rightly held that the accident occurred only due to composite negligence of PW1 and RW1 and thereby attributed 50% negligence to each. While coming to such conclusion the Tribunal observed that both the vehicle coming in opposite direction to one another and after crossing the front portion of the bus, the rear right side portion of the bus allegedly hit the motorcycle on which PW1 along with his wife and two children were traveling carrying a big bag in the hands of his wife. The Tribunal also observed that when the vehicle is over loaded with four persons and a bag in the hands of wife of PW1, there is possibility of loosing balance over the motorcycle while riding the same; that there is utter violation of Rules of M.V.Act and that it is highly difficult for the driver of the bus to notice what is happening on the rear side of the bus or on the backside of the bus; that it is the duty of the motorcyclist to drive the motorcycle diligently without hitting the bus; that in the present case on account of overloading or traveling of four persons on the motorcycle, violating the rules

under M.V.Act, PW1 lost his control over the vehicle and hit the bus and that even the bus driver also did not take maximum care and caution while driving the bus.

12. In so far as the Judgments relied on by the appellants in **Kumari K.Pushpa Latha case (cited supra 1) and United India Insurane Company Case (cited supra 3)** with regard to triple riding, are concerned, they cannot come to the rescue of the appellant since the Tribunal has taken the facts and circumstances of the case and found that the motor cycle hit the backside of the bus. In view of the same, the finding of the Tribunal cannot be disturbed on that aspect and the contention of the learned counsel for the appellant that there is no negligence on the part of PW1 who was driving the motor cycle cannot be up held.

13. As far as deduction towards income tax is concerned, Exs.A7-salary certificate of the deceased clearly shows that the deceased was drawing Rs.17,406/- per month. The Tribunal, while calculating loss of future earnings and dependency has deducted 10% towards income tax and the same is disputed by the learned counsel for the appellants stating that there cannot be further deduction towards income-tax, as the amount that is received by the deceased presumed to be the income after deduction of income tax. In support of this contention he relied on the Judgment in ***Vimal Kanwar's case (cited***

supra 4) wherein at para-23 the Apex Court held as follows;

> "23. In view of the finding as recorded above and the provisions of the Income Tax Act, 1961, as discussed, we hold that the high Court was wrong in deducting 20 per cent from the salary of the deceased towards income tax, for calculating the compensation. As per law, the presumption will be that employer State Government at the time of payment of salary deducted income tax on the estimated income of the deceased employee from the salary and in absence of any evidence, we hold that the salary as shown in the last pay certificate at Rs.8,920/- should be accepted which if rounded off comes to Rs.9,000/- for calculating the compensation payable to the dependant(s)."

14. As such, the salary shown in Ex.A7 presumed to be the salary of the deceased after deduction of income tax and the deduction of 10% made by the Tribunal is erroneous. Further the multiplier '16' applied by the Tribunal needs no interference by this Court in view of the guidelines of the Apex Court in ***Sarla Verma and others v. Delhi Transport Corporation and another***[6].

15. Thus, the compensation awarded by the Tribunal under loss of dependency is modified as follows;

Salary of the deceased as per Ex.A7
Rs.17,406.00
Add: 50% of the income towards loss of
Future prospects 17,406 x 50/100 Rs.
8,703.00

Rs.26,109.00

Annual income of the deceased
(26,109 x 12)
Rs.3,13,308.00
Less: Professional tax Rs.150/- p.m.
(150 x 12) Rs.
1,800.00

____

Rs.3,11,508.00
Less: 1/3rd towards personal expenses
Rs.1,03,836.00

____

Loss of dependency per annum
Rs.2,07,672.00

Total Loss of Dependency =
Rs.33,22,752/-
2,07,672 x 16 (multiplier)

16. Since the accident occurred due to composite negligence on the part of the drivers of the motor cycle as well as RTC bus, 50% of the amount arrived under the head loss of dependency, has to be deducted from the total loss of dependency. As such, the amount payable towards loss of dependency to the claimants comes to Rs.16,61,376/-(33,22,752 x 50/100).

17. Further, the Tribunal has granted a meagre amount of Rs.10,000/- towards loss of consortium; Rs.5,000/- towards loss of estate. But the Apex Court in ***Rajes' case***

(cited supra 5) granted Rs.1,00,000/- towards loss of consortium; Rs.1,00,000/- towards loss of care and guidance for minor children; and Rs.25,000/- towards funeral expenses. As such, the amount awarded by the Tribunal under loss of consortium and loss of estate is enhanced to Rs.1,00,000/- each; and Rs.25,000/- is awarded towards funeral expenses. Thus the total compensation payable to the claimants comes to Rs.18,86,376/- (16,61,376 + 1,00,000 + 1,00,000 + 25,000)

18. Thus, the Appeal is partly allowed enhancing the compensation awarded by the Tribunal to the appellants from Rs.15,56,076/- to Rs.18,86,376/- payable by the respondent and on the enhanced amount of Rs.3,30,300/- interest @ 7.5% is awarded from the date of claim petition. 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.RAJASHEKER REDDY, J

27th November , 2015.

tk

[1] 2013(2) ALD 659

[2] 2012(6) ALD 688

[3] 2011(2) ALD 3

[4] 2013 ACJ 1441

[5] 2013 ACJ 1403

[6] 2009 ACJ 1298