

HON'BLE SRI JUSTICE S.V.BHATT

M.A.C.M.A.No.1307 OF 2005

JUDGMENT:

The 4th respondent- insurance company in M.V.O.P. No.117 of 2001 in the Court of Motor Accidents Claims Tribunal-cum-V Additional District Judge, Chittoor at Tirupati, is the appellant.

Heard learned counsel for the parties.

The facts relevant for disposal of the appeal are as follows:

According to respondents-claimants, on 19.07.2000, their son Manohar Reddy was travelling in APSRTC bus bearing No.AP.10-Z.5260 and at 1.30 a.m. when the bus reached near Penugonda on NH7 road, the driver of the bus drove the vehicle in a rash and negligent manner and hit lorry bearing No. APQ 9495, resultantly, the bus was crushed and Manohar Reddy suffered injuries and succumbed to the injuries in the Government hospital, Hindupur. The 3rd respondent being the employer of driver of the bus, the 4th respondent and the appellant being the owner and insurer of the lorry are liable to pay the compensation.

The 3rd respondent filed counter affidavit stating that the bus was proceeding from Bangalore to Ananthapur and when it reached near Ammavaripalli, the lorry came from opposite direction in a rash and negligent manner and hit the bus at driver's seat, as a result the bus fallen in to ditch under the culvert and the driver of the bus died. It is further stated that cleaner of the lorry was driving the lorry at the time of accident and a criminal case was registered against the cleaner of the lorry.

The appellant herein filed counter stating that the driver of

APSRTC bus drove the bus without dim and dip and it amounts to rash and negligent driving. However, the appellant admits that the lorry was insured under the 'Act Policy' and that appellant would indemnify the insured subject to the condition that driver of the lorry was holding licence and valid RC permit by the date of accident. It is stated that the claim of the claimants is excessive and exorbitant.

Based on the pleadings, the Tribunal framed the following issues:

- i. What was the age and income of the deceased by the date of his death?
- ii. Whether the petitioners are entitled for compensation?
If so to what amount? From whom?
- iii. To what relief?

Having regard to the evidence available on record and the facts and circumstances of the case, the Tribunal has decided issue No.1 in favour of the claimants. As regards issue No.2, the Tribunal relying on evidence of RW.1-bus conductor coupled with Exs.A.1-FIR and B.1-charge sheet came to the conclusion that the accident occurred due to rash and negligent driving by the driver of lorry.

On the basis of evidence of PWs 1 and 2 and Ex.A.4, the income of the deceased is fixed at Rs.3,500/-per month and by deducting $\frac{1}{3}^{\text{rd}}$ towards his personal expenses, the monthly income is arrived at Rs.2333/-. Since the deceased was unmarried, his mother's age is taken, as 35 years, for applying the multiplier '16'. The annual income of the deceased to be contributed towards the family would be Rs.27,996/- (Rs.2333x12). The loss of dependency is arrived at Rs.4, 47,

936/- (Rs.27,996 x16). Further, the Tribunal granted Rs.10,000/- towards loss of love and affection and Rs.1,000/- towards transport expenses. Thus, the total compensation of Rs.4,58,936/- is awarded. The claimants claimed Rs.4,00,000/- so the compensation is restricted to Rs.4,00,000/-.

Now the point for consideration is whether the impugned award warrants interference of this Court on the ground of illegality or irregularity.

The learned counsel have substantially reiterated the very same contentions in the appeal. I have taken note of the submissions of learned counsel appearing for the parties and perused the material available on record. From Exs.A.1-FIR and B.1-charge sheet coupled with photographs filed along with counter of 3rd respondent, it is clear that the accident occurred due to rash and negligent driving of the cleaner of lorry, the Tribunal has fastened the liability on the 4th respondent- owner of the lorry and the appellant. The compensation awarded by the Tribunal is just and proper. As it is established that the lorry was driven by the cleaner of lorry at the time of accident, the Tribunal has rightly observed that the appellant insurance company has to pay the compensation to the claimants and recover the same from the owner of lorry. Therefore, I am in agreement with the order impugned in the appeal. However, as per the decision of the Apex Court in **Rajesh v. Rajbir Singh**^[1] the claimants are entitled to 7.5% interest per annum.

The appeal is allowed - in- part reducing interest from 9% per annum to 7.5% per annum from the date of petition till deposit in Court. No costs.

Miscellaneous petitions pending if any shall stand closed.

SV.BHATT,J

Date: 07.12.2015
Stp

[\[1\]](#) (2013) 9 SCC 54