

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A.No.128 OF 2013

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988, challenging the judgment and award dated 30.11.2012 passed in M.V.O.P.No.2558 of 2010 on the file of the Chairman, Motor Vehicle Accidents Claims Tribunal-cum-XIV Additional Chief Judge, (Fast Track Court), City Civil Courts, Hyderabad, wherein and whereby an amount of Rs.2,11,300/- was awarded to the claimants as against the claim of Rs.5,00,000/-.

2. The parties to this appeal will hereinafter be referred to as they are arrayed before the Tribunal, for the sake of convenience.

3. The facts leading to filing of the present appeal are briefly as follows: On 27.9.2010, B.Kiran Kumar was proceeding on his Honda Activa motor cycle bearing No.AP 11 AC 9355 on his personal work. When he reached near Nalgonda X Roads, Saidabad, the driver of APSRTC bus bearing No.AP 9Z 9199 had driven the same in a rash and negligent manner and hit the motor cycle of Kiran Kumar. Due to the accident, Kiran Kumar (hereinafter referred to as, the deceased) fell down from the motor cycle and died on the spot. The accident occurred due to the rash and negligent driving of the driver of the APSRTC Bus against whom the Station House Officer, Chaderghat Police Station registered a case in Crime No.309 of 2010 under Section 304A IPC. By the time of unfortunate death, the deceased was aged about 19 years and studying B.Sc., first year. The deceased used to earn Rs.5,000/- per month by conducting tuitions. The first petitioner is the mother, second petitioner is the father and the third petitioner is the sister of the deceased. The respondents—APSRTC is liable to pay compensation to the petitioner.

4. The respondents filed counter denying the averments made in the petition including the manner of the accident, age and income of the deceased. It is contended that the accident occurred due to the rash and negligent riding of the motor cycle by the deceased and there was no negligence on the part of the driver of the bus. The amount of compensation claimed by the petitioners, under various heads, is highly excessive and exorbitant. Hence, the petition may be dismissed.

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

1. Whether the pleaded accident had occurred resulting in death of the deceased, B.Kiran Kumar, due to the rash and negligent driving of the motor vehicle (APSRTC bus bearing registration No.AP 9Z 9199) by its driver?

2. Whether the petitioners are entitled to any compensation, and if so, at what quantum and what is the liability of the respondents?

3. To what relief?

6. During the course of trial, on behalf of the petitioners, P.Ws.1 to 4 were examined and Exs.A1 to A9 were marked. On behalf of the respondents, no oral or documentary evidence was let in.

7. On appraising the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident 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 in part by awarding compensation of Rs.2,11,300/-. Being not satisfied with the quantum of compensation awarded by the Tribunal, the petitioners-claimants preferred the present appeal.

8. The learned counsel for the petitioners—claimants submitted that the Tribunal has not properly considered the income and educational qualifications of the deceased while determining the compensation.

He further submitted that the Tribunal awarded meager amount under conventional heads. ***Per contra***, learned counsel for the respondents-APSRTC submitted that the Tribunal has considered the oral and documentary evidence in right perspective and awarded just and reasonable compensation. He further submitted that there are no grounds to interfere with the judgment and award of the Tribunal.

9. Now the points that arise for consideration in this appeal are:

1. Whether the Tribunal has awarded just and reasonable compensation or not?
2. Whether there are any grounds to interfere with the judgment and award of the Tribunal?

Point Nos.1 and 2:

10. Both the points are interlinked with each other; hence, I am inclined to deal with these two points simultaneously in order to avoid confusion.

11. As per the findings of the Tribunal, on issue No.1, the accident occurred due to the rash and negligent driving of the driver of APSRTC bus bearing No.AP 9Z 9199, which resulted in the death of the deceased. The respondents have not filed appeal or cross-objections challenging the said finding of the Tribunal. The finding recorded by the Tribunal became final. Hence, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the APSRTC bus.

12. Basing on the oral and documentary evidence available on record, the Tribunal determined the age of the deceased as 19 years by the time of the accident. There is no much dispute with regard to the age of the deceased. To prove the income of the deceased, the petitioners mainly relied on the testimony of P.W.4. As per the testimony of P.W.4, she used to pay an amount of Rs.1,600/- per month to the deceased towards tuition fee. The Tribunal has taken the same as income of the deceased. A perusal of Ex.A6 (bona fide and

conduct certificate dated 08.8.2011) clearly reveals that by the time of the accident, the deceased was studying B.Sc., first year. After completion of Graduation, there is every possibility for the deceased to get employment basing on his academic qualifications. In the absence of documentary evidence, some guess work is inevitable to determine the income of the deceased. Taking into consideration, educational qualification and other attending circumstances, I am of the considered view that the deceased may earn not less than Rs.4,000/- per month even by securing suitable job.

13. The fact remains that the deceased is an unmarried person. In case of unmarried persons, 50% of the income shall be deducted towards his personal expenses. The deceased may contribute to the family an amount of Rs.2,000/- per month and Rs.24,000/- per annum. As per the principle enunciated in **Munna Lal Jain v Vipin Kumar Sharma**^[1], for determining the multiplier the age of the deceased has to be taken into consideration. As per the principle enunciated in **Sarla Verma v DTC**^[2], appropriate multiplier that would be applicable for the age group of 15 to 25 is '18'. Thus the petitioners are entitled to an amount of (Rs.24,000 X 18 =) Rs.4,32,000/- towards loss of dependency.

14. As rightly pointed out by the learned counsel for the petitioners, the Tribunal awarded meager amount of Rs.2,500/- towards loss of estate; Rs.2,000/- towards funeral expenses and Rs.2,000/- towards transportation charges. In view of the principle enunciated in **Ramilaben Chinubhai Parmar v National Insurance Company Ltd.**^[3], and **Kishan Gopal v Lala**^[4], the petitioners are entitled to Rs.50,000/- towards conventional damages. Thus the total compensation for which the petitioners are entitled to is Rs.4,82,000/-. The compensation awarded under the above heads would meet the

ends of justice. Accordingly, the points are answered.

15. In the result, the appeal is allowed in part, enhancing the compensation amount from Rs.2,11,300/- to Rs.4,82,000/-. The petitioners are entitled to interest on the enhanced compensation amount of Rs.2,70,700/- at 7.5% per annum from the date of the petition till realisation. The petitioner Nos.1 and 2 are equally entitled to the enhanced compensation amount with proportionate costs and interest thereon. 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: 05th August, 2015.

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[\[1\]](#) (2015) 6 SCC 347

[\[2\]](#) (2009) 6 SCC 121

[\[3\]](#) 2014 ACJ 1430

[\[4\]](#) (2014) 1 SCC 244