THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.CMA.No.1623 OF 2009
AND
CROSS OBJECTIONS (Sr) No.31135 OF 2009

COMMON JUDGMENT:

The present appeal is preferred by the erstwhile Road Transport Corporation of Andhra Pradesh State, represented by its Managing Director, under Section 173 of the Motor Vehicles Act, 1988, aggrieved by the award of Rs.3,66,000/- as compensation by order and decree, dated 18.03.2008, passed in O.P.No.673 of 2004 on the file of Chairman, Motor Accidents Claims Tribunal – cum – VIII Additional District Judge, Nizamabad, requesting to set aside the order and decree under challenge on the ground that the Tribunal has not properly appreciated the manner in which the accident had taken place and overlooked the evidence of RW.1, conductor of the bus at the relevant time, whose evidence would establish that there was contributory negligence on the part of the deceased, Manchiryala Srinivas.

2. The appellant in the appeal and respondent in the cross objections, which is Andhra Pradesh Road Transport Corporation, is respondent, while the respondents in the appeal, who are the cross objectors, are petitioners 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 on 03.11.2003 at about 03:30 PM, while one Manchiryala Srinivas along with his friend Ramagiri Kedarnath was going on Suziki motorcycle bearing registration No.AP-25-H-1402, from Nizamabad to Muchkoor, and when they reached Ganga Kaveri Seed Company, Ankapoor Village, an R.T.C. bus bearing registration No.AP-10-Z-2313 belonging to the respondent came at high speed in a rash and negligent manner and dashed the motorcycle, due to which impact, the said Manchiryala Srinivas and his friend fell down and sustained grievous injuries and the said Manchiryala Srinivas died on the spot. Thus, the petitioners, who are the parents and sisters of the deceased, Manchiryala Srinivas, stating that the deceased was aged 25 years earning Rs.20,000/- per month doing cultivation and their caste profession 'goldsmith', sought to grant a sum of Rs.10,00,000/- as compensation.

5. The respondent filed counter denying the allegations made in the petition.

6. Based on the said pleadings, in the direction of accounting for responsibility about the accident, the Tribunal has framed three issues.

7. During enquiry, petitioner No.1 examined himself as PW.1 besides examining PWs.2 and 3 and marked Exs.A1 to A20. On behalf of the respondent, Conductor of the bus, at the relevant time, was examined as RW.1, but no documents were filed.

8. The Tribunal, having appreciated the evidence on record, held issue No.1 in favour of the petitioners. On issue No.2, though, it is alleged by the petitioners that the deceased was earning Rs.20,000/- per month by doing cultivation, gold jewellery business and working in Diotch Company, since, admittedly, the deceased was unmarried and was aged about 24 years, the Tribunal, holding that in all probability, the deceased was assisting his father in his caste profession and cultivation of lands, taken the monthly income of the deceased as Rs.3,500/-, which works out to Rs.42,000/- per annum, and by deducting $1/3^{rd}$ therefrom towards personal expenses of the deceased and by applying multiplier ‘13’, taking the age of mother, being younger parent, since the deceased died in unmarried status, worked out the loss of dependency at Rs.3,64,000/- and accordingly, granted the same, besides granting Rs.2,000/- towards funeral expenses, thus, making a total of Rs.3,66,000/- with interest at 7.5% per annum.

9. It is the aforesaid order which is under challenge

in the instant appeal by the respondent – Corporation contending in the grounds that the Tribunal ought to have considered the evidence of RW.1 and have fixed atleast contributory negligence on the part of the deceased, that the Tribunal ought to have applied multiplier ‘10.45’ instead of ‘13’, and that the Tribunal has erred in assessing the income of the deceased as Rs.3,500/- per month and, thus, sought to set aside the order and decree under challenge.

10. Even the petitioners - claimants have preferred Cross Objections Sr.No.31135 of 2009 contending in the grounds that, though, the deceased, Manchiryala Srinivas, was earning Rs.20,000/- per month and was contributing not less than Rs.15,000/- per month for the maintenance of his parents and his own sisters, the Tribunal has fixed monthly earnings of the deceased at Rs.3,500/-, which is erroneous, and the Tribunal ought to have applied multiplier ‘12’ and, therefore, sought to grant Rs.10,00,000/- towards compensation as claimed in the O.P.

11. Heard Sri N. Vasudeva Reddy, learned Standing Counsel for the appellant - Corporation, and Sri M. Raja Malla Reddy, learned counsel for respondent Nos.1 to 5, incidentally, cross objectors.

12. Perused the order under challenge and the

findings recorded by the Tribunal on each issue.

13. So far as the first submission of the learned Standing Counsel for appellant is concerned, certainly, the finding recorded by the Tribunal rejecting the evidence of RW.1 cannot be interfered with, since it is based on facts and is well reasoned, more particularly, when the driver himself withheld from giving evidence and no reasons being assigned by the Corporation for preferring the conductor rather than the driver of the bus, that too, in an attempt to prove negligence or contributory negligence on the part of the deceased himself.

14. Turning to the compensation awarded by the Tribunal, the questions that arise for consideration are whether the monthly income taken by the Tribunal is based on any documentary evidence and if so, the Tribunal has correctly arrived at or not, whether the multiplier applied by the Tribunal is in accordance with the well settled decisional law, and consequently, whether the petitioners – cross objectors are entitled to any enhancement of compensation.

15. As could be seen from the order under challenge and the evidence on record, except Ex.A9, which is Business Licence, no other legally acceptable evidence is forthcoming to prove the income of the deceased at Rs.20,000/- per month, as claimed in the

O.P. Therefore, the finding recorded by the Tribunal that the deceased was earning Rs.3,500/- per month by assisting his father in the business cannot be found fault with and no interference is, therefore, warranted.

16. The next question is whether the deduction of 1/3rd made by the Tribunal is in accordance with the well established principles of law. In fact, when the death of a person takes place in an unmarried status, 50% of his income has to be deducted towards his personal expenses, which can be gathered from the decisions of the Honourable Supreme Court in **Sarla Verma v. Delhi Transport Corporation**[1]**, Rajesh and others v. Rajbir Singh and others**[2] **and Amrit Bhanu Shali and others v. National Insurance Company Limited and others**[3]**.** Hence, when the monthly income of the deceased is taken at Rs.3,500/-, the annual income works out to Rs.42,000/- and when 50% thereof is deducted towards his personal expenses, his contribution to the family works out to Rs.21,000/- per annum. Since the deceased was aged 24 years on the date of accident, as could be seen from the contents of Ex.A3, the relevant multiplier is ‘18’ and when the said multiplier is applied, the loss of dependency works out to Rs.3,78,000/-.

17. Now turning to the question whether the cross

objectors are entitled to any future prospects, it is no doubt true that respondent No.1 is no other than the father of the deceased, who is a goldsmith by profession, but, however, the mother's presence cannot be excluded. In that view of the matter, 50% is required to be added towards future prospects, in addition to what has been arrived at, which works out to Rs.1,89,000/-. Further, the amount of Rs.2,000/- granted towards funeral expenses is enhanced to Rs.5,000/-. Thus, the petitioners are granted Rs.5,72,000/- as compensation with interest at 7.5% per annum, which was also the rate of interest awarded by the Tribunal in view of the decision of the Honourable Supreme Court in **Rajesh and others v. Rajbir Singh and others**[4].

18. Accordingly, the appeal is dismissed and the cross objections are allowed in part enhancing the compensation from Rs.3,66,000/- to Rs.5,72,000/- with interest at 7.5% per annum.

19. Miscellaneous Petitions, if any, pending in this appeal, shall stand closed. No costs.

A. SHANKAR NARAYANA, J

August 01, 2016.
MD

[1]. 2009 (3) ALD 83 (SC)

[2] (2013) 9 SCC 54

[3] 2012 AIR (SCW) 3901

[4] (2013) 9 SCC 54