

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.No.641 of 2009

and

Cross Objections (SR) No.31311 of 2007

Common Judgment:

Both the APSRTC and the claimants have challenged the award dt:07.06.2005 in O.P.No.132 of 2004 passed by the Motor Accidents Claims Tribunal-cum-District Judge, Nellore (for short “the Tribunal”), the former in the form of instant appeal and the latter in the form of cross-objections.

2) The parties hereinafter are referred as they were arrayed before the lower Tribunal.

3) The factual matrix of the case is thus:

a) The first claimant is the mother and claimants 2 to 4 are the unmarried sisters of the deceased—Thummuru Krishna Vijay. Their case is that on 04.03.1998 at about 3:00pm, while the deceased along with his friend was proceeding on a bullet motorcycle bearing No.AP N 9379 towards Gudur after purchasing gunny bags at Kadivedu village and when they reached near Varagali cross roads on GNT road, a RTC bus bearing No.AP 9 Z 7539 being driven by its driver at high speed and in a rash and negligent manner, came in opposite direction and dashed the motorcycle of the deceased and thereby they both fell down. The deceased was shifted to Government Hospital, Gudur where he succumbed to injuries on the same

day at 4:20pm while undergoing treatment. It is averred that the accident was occurred due to the rash and negligent driving by the driver of RTC bus and due to sudden demise of the deceased, the claimants became destitutes. On these pleas they filed the O.P.No.132 of 2004 under Section 166 of Motor Vehicles Act, 1988 (for short "MV Act") claiming compensation of Rs.3,10,000/- under different heads mentioned in OP.

b) Respondent/APSRTC filed counter and denied all the material allegations made in the petition and urged to put the claimants in strict proof of the same. It contended that the accident was occurred due to the rash and negligent driving of motorcycle by the deceased himself but not due to the driver of the bus. Finally, it contended that the compensation claimed is highly excessive, exorbitant and thus prayed to dismiss the O.P.

d) During trial P.Ws.1 and 2 were examined and Exs.A1 to A5 were marked on behalf of the claimants. RW1 was examined and no document was marked on behalf of the respondent.

e) The Tribunal on appreciation of both oral and documentary evidence awarded compensation of Rs.2,39,700/- under different heads as follows:

Loss of dependency	Rs. 2,35,200-00
Loss of estate	Rs. 2,500-00
Funeral expenses	Rs. 2,000-00

Rs. 2,39,700-00

Hence the appeal and cross objections challenging the award.

4) Heard arguments of Sri P.Durga Prasad, learned Standing Counsel for RTC/appellant and respondent in Cross Objections(SR) No.31311/2007 and Sri Nagaraju Naguru, learned counsel for respondents 1 to 4/claimants and cross objectors in Cross Objections(SR) No.31311/2007.

5 a) Challenging the award learned Standing Counsel for RTC/appellant argued that the Tribunal grossly erred in fixing the liability on the bus driver. Learned counsel argued that the deceased himself was responsible for the accident as he in the process of overtaking a hayrick cart, went and dashed the RTC bus and this fact was clearly spoken by RW.1 but the Tribunal did not consider the same and instead relied upon the evidence of PW.2 and wrongly fixed liability on the bus driver.

b) Nextly learned counsel argued that the Tribunal wrongly fixed the monthly income of the deceased as Rs.2,100/- without there being any cogent evidence in that regard and thereby compensation was highly escalated. He argued that except pleading that the deceased by doing gunny bags business earning Rs.5,000/- p.m, the claimants have not produced any iota of evidence to establish the said fact. He thus prayed to allow the appeal and exonerate the RTC or reduce the

compensation suitably.

6 a) Per contra, learned counsel for respondents/claimants argued that the bus driver was solely responsible for the accident as he drove the vehicle in a rash and negligent manner and dashed the motorcycle of the deceased and the said fact was clearly deposed by PW.2 who is an independent witness. He argued that except examining the driver as RW.1 who is an interested witness, the RTC did not examine any independent witnesses like the passengers in the bus to establish the innocence of the bus driver and guilt of the deceased. The Tribunal rightly held that the bus driver was responsible for the accident.

b) Nextly, learned counsel argued that the compensation awarded was too low inasmuch as the Tribunal has not properly considered the business and income of the deceased. In expatiation, he argued that, in fact before accident the deceased and his friend went to Kadivedu village to purchase gunny bags and while returning home they met with accident and this fact was clearly mentioned in the FIR and other records. Therefore, the Tribunal ought to have believed the avocation of the deceased and his income of Rs.5,000/- which by all means a modest one. Instead the Tribunal on baseless assumption took the income of the deceased as Rs.2100/- p.m and thereby the compensation for loss of dependency was drastically reduced. Learned counsel further argued that the Tribunal has not taken into consideration the future prospects of

the deceased. By this count also compensation was reduced. He further argued that in the light of the decision of the Division Bench of this High Court reported in ***N.Surender Rao vs. B.Swamy***^[1], the age of the deceased has to be taken for selection of multiplier but the Tribunal took the age of the mother on account of which also compensation was lowered. Learned counsel submitted that since the compensation was considerably low, the claimants preferred the cross objections to award compensation at Rs.3,10,000/- as originally claimed by them. However, in case the Court comes to conclusion that they deserve higher compensation, the same may be allowed and the claimants are ready to deposit the additional Court Fee. He thus prayed to allow the cross objections and dismiss the appeal filed by the RTC.

7) In the light of above rival arguments, the point for determination is:

“Whether the award passed by the Tribunal is factually and legally sustainable?”

8) **POINT**: The accident, involvement of the RTC Bus bearing No.AP 9 Z 7539 and motorcycle bearing No.AP N 9379 are admitted facts.

9) The first contention of the appellant/RTC is that the deceased was solely responsible for the accident and the Tribunal erred in fastening the liability on the bus driver. On a

perusal of the facts and evidence I am unable to accept this contention. The claimants examined PW.2 an independent witness to prove the guilt of the bus driver. PW.2 and his friend proceeded behind the vehicle of the deceased and witnessed the accident. According to PW.2 when they reached Varagali cross roads on GNT road at about 3:00pm, the offending bus came in the opposite direction being driven by its driver at high speed and in a rash and negligent manner and dashed the motorcycle of the deceased and thus caused the accident. He asserted that the bus driver was responsible for the accident. In the cross-examination he denied the suggestion that the deceased in the process of overtaking a hayrick cart, went and dashed the bus. Except giving the suggestion which was staunchly denied, nothing specific could be extracted from PW.2 to prove the innocence of the bus driver. It must be noted that no suggestion was given that this witness did not witness the accident. So the evidence of PW.2 clearly depicts that the bus driver was responsible for the accident. The oral evidence of this witness gets support from Ex.A.4—charge sheet which shows that the police too after investigation found fault with the bus driver and charge-sheeted him. As against this oral and documentary evidence, the RTC examined its driver as RW.1. He no doubt deposed as if the deceased while overtaking the D.B. Cart, went and dashed the bus. However, the evidence of RW.1 cannot be given much weight as he is an interested witness. As rightly argued by the respondents, the RTC has not

examined any independent witnesses such as passengers in the bus to buttress its stand. Therefore, the Tribunal rightly fixed the liability on the bus driver.

10) The next plank of argument of the appellant/RTC is that the Tribunal took high amount as the earnings of the deceased though there was no cogent evidence regarding his avocation and earnings. Per contra, the argument of respondents/claimants is that inspite of the cogent evidence to the effect that deceased was engaged in gunny bags business and earnings Rs.5,000/- p.m, the Tribunal took a low amount of Rs.2,100/- p.m. The above diverge argument necessitates this Court to peruse the record. As per the pleadings in the O.P, the deceased—Krishna Vijay was aged about 20 years and was doing business in gunny bags and earning Rs.5,000/- p.m. Coming to the evidence, in Ex.A.1—FIR itself the said fact was mentioned. The FIR was registered on the strength of the statement of the friend of the deceased by name P.Ravi. As per his statement, the deceased and said P.Ravi who were friends went to Kadivedu village on 04.03.1998 to purchase gunny bags for their business purpose and while returning to Gudur, on the way, the accident was occurred. The FIR was registered within short time after the accident and therefore, the facts mentioned therein relating to the avocation of the deceased can be believed to be true as there was no chance for manipulation. Thus from the facts narrated in the FIR, it is clear that the deceased was engaged in gunny bags business.

However, there is no cogent evidence with regard to the earnings of the deceased since claimants have not produced any documentary proof regarding his earnings. The Tribunal on assumption took the daily earnings of the deceased as Rs.70/- i.e, Rs.2,100/- p.m. The deceased died in the year 1998. As rightly argued, though the said amount cannot be said to be grossly low, the Tribunal has not taken into consideration the future prospects of the deceased. Hence, following the decision of the Supreme Court in ***Santosh Devi vs. National Insurance Co. Ltd.***^[2], 30% has to be added to the earnings of the deceased towards future prospects which comes to Rs.2,730/- (Rs.2,100 + Rs.630). The annual income of the deceased which will serve the purpose as multiplicand comes to Rs.32,760/- (Rs.2,730 x 12). Since the deceased was bachelor, generally 50% has to be deducted towards personal and living expenditure as laid down in ***Smt.Sarla Verma vs. Delhi Transport Corporation***^[3]. However, considering the fact that the deceased left behind four dependants i.e, his mother and three unmarried sisters, 1/4th is only deducted towards his personal expenditure following ***Sarla Verma's*** case (3 supra). Thus the net annual contribution of the deceased to the claimants comes to Rs.24,570/- (Rs.32,760 x ¾). Multiplier is concerned, the Tribunal having regard to the age of the mother of the deceased, applied '15'. However, a Division Bench of this Court in a recent decision reported in ***N.Surender Rao's*** case (1 supra), held that the age of the deceased-bachelor has

to be taken into consideration for selection of multiplier. The deceased was in the age group of 15 to 20 years, for which ‘18’ is the multiplier suggested by Hon’ble Apex Court in **Sarla Verma’s** case (3 supra). Thus the compensation for loss of dependency comes to **Rs.4,42,260/-** (Rs.24,570/- x 18).

a) It should be noted that compensation now awarded exceeds the original claim of Rs.3,10,000/- made by the claimants. However, the Court in the process of awarding just and reasonable compensation, can grant more amount than claimed by the claimants as laid down by the Apex Court in **Nagappa vs. Gurudayal Singh**^[4].

Thus the total compensation payable to the claimants under different heads is as follows:

Loss of dependency	Rs. 4,42,260-00
Loss of estate	Rs. 2,500-00
Funeral expenses	Rs. 2,000-00

	Rs. 4,46,760-00

Thus, compensation is enhanced by **Rs.2,07,060/-** (Rs.4,46,760/- minus Rs.2,39,700/-).

11) In the result, Appeal and Cross Objections are disposed of and ordered as follows:

- (i) MACMA No.641 of 2009 filed by the appellant/RTC is dismissed.

- (ii) Cross Objections (SR) No.31311 of 2007 filed by the claimants is allowed and compensation is enhanced by **Rs.2,07,060/-** with proportionate costs
- (iii) The enhanced compensation amount shall carry interest @ 7.5% per annum from the date of OP till the date of realization.
- (iv) The APSRTC is directed to deposit the compensation amount within two(2) months from the date of this judgment, failing which execution can be taken out against it.
- (v) The claimants are directed to pay the additional Court Fee on Rs.1,36,760/- (Rs.4,46,760 minus Rs.3,10,000/-) within one(1) month from the date of this judgment.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 02.06.2016

SCS

[\[1\]](#) 2014 (1) ALT 512 (DB)

[\[2\]](#) 2012 ACJ 1428 (SC)

[\[3\]](#) 2009 ACJ 1298 (SC)

[\[4\]](#) 2003 ACJ 12 (SC) (FB)