

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.2300 OF 2009

JUDGMENT:

The present appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), is preferred by the Andhra Pradesh State Road Transport Corporation, represented by its Managing Director, Musheerabad, Hyderabad, and its Depot Manager, Depot - II, Nizamabad, who are respondent Nos.1 and 2 in O.P. No.500 of 2005, challenging the order and decree therein, dated 05.02.2009, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - VIII Additional District Judge, Nizamabad (for short 'Tribunal'), granting Rs.4,59,000/- for the death of one Duskari Lachanna, whose legal representatives are respondents herein and claimants (petitioners) in the original petition, mainly on the ground that the Tribunal overlooked the fact of contributory negligence as it is a case of head on collision and bad for non-joinder of owner and insurer of the Scooter bearing No.AP-25-B-3281 and on the further ground that without tangible evidence being let in by the claimants, the Tribunal went wrong in fixing monthly earnings of the deceased at Rs.3,000/-.

2. Turning to the facts on 22.12.2004, while Duskari Lachanna was riding the scooter bearing No.AP-25-B-

3281 from Jannepally towards Nizamabad with a pillion rider one Borugula Gangadhar and reached outskirts of Palda village, at about 4.15 p.m., an APSRTC bus bearing No.AP-10-Z-9032 driven in a rash and negligent manner at high speed, coming in the opposite direction, came on wrong side and hit the scooter and front wheel of the bus ran over him causing grievous injuries and immediately he was shifted to Government Head Quarters Hospital, Nizamabad, and from there to Hyderabad and succumbed to injuries on 25.12.2004 at about 1.45 p.m. while undergoing treatment in Gandhi Hospital, Secunderabad.

3. Claiming that they spent Rs.1,00,000/- towards transportation, medical and attendant charges and that the deceased was 23 years old earning Rs.20,000/- per month by doing cultivation and paddy business, sought a total compensation of Rs.10,00,000/- lakhs from the APSRTC.

4. Common counter was filed by the APSRTC opposing the claim, attributing rash and negligent driving to the deceased himself and thereby making a request to dismiss the claim petition.

5. The Tribunal, based on the pleadings, framed three (3) issues in order to determine compensation as well as negligence in taking place of the accident.

6. During enquiry before the Tribunal, petitioner No.1, wife of the deceased, besides examining herself as PW.1, has examined the pillion rider as PW.2 and one Indoor Raju as PW.3, who has issued income certificate in Ex.A-5 in his capacity as Sarpanch of the village and marked Exs.A-1 to A-5. On behalf of the APSRTC, driver of the bus that involved in the accident was examined as RW.1, but no documents were filed.

7. Heard Sri N. Vasudeva Reddy, learned counsel for the APSRTC (appellants).

8. No representation for the petitioners (respondent Nos.1 to 3).

9. Perused the order under challenge and the material on record.

10. The Tribunal, of course, did not agree with Ex.A-5, income certificate, contents and the evidence of PW.3 on the ground that Nadipi Ganganna, whose land was said to be cultivated by the deceased on lease was not examined, and, therefore, fixed his monthly earnings at Rs.3,000/- basing on the evidence available on record and deducted $\frac{1}{3}^{\text{rd}}$ i.e., Rs.1,000/- ($\text{Rs.3,000/-} \times \frac{1}{3}$) therefrom towards his personal expenses working out his contribution to the family at Rs.2,000/- per month or

24,000/- per annum, applied multiplier '18' and worked out the loss of dependency as Rs.4,32,000/-.

The Tribunal has also granted other sums i.e., Rs.5,000/- towards loss of consortium to petitioner No.1, Rs.10,000/- towards medical expenses and Rs.2,000/- towards funeral expenses. Placing reliance on the decision of the Apex Court in **Lal Dei and others v. Himachal Pradesh Road Transport Corporation and another** (2008 ACJ 1107), granted interest at the rate of 9% per annum from the date of petition till realization.

11. The aforesaid order is under challenge in the instant appeal preferred by the APSRTC mainly on the ground that the evidence of RW.1 was overlooked and the Tribunal ought to have seen that it was a 'head on collision' and even the claim was bad for non-joinder of the insurer and owner of the scooter and that in the absence of legally acceptable evidence, the Tribunal has fixed monthly earnings of the deceased at Rs.3,000/- per month.

12. The finding recorded by the Tribunal fixing monthly earnings of the deceased at Rs.3,000/- cannot be disturbed as it is well reasoned, which can be gathered from rejection of Ex.A-5, which, thus, justifies that the Tribunal, on proper appreciation of evidence on record, taken that view. Since the dependants are numbering three (3), deduction of 1/3rd from the income of the

deceased also cannot be faulted. The age of the deceased was taken by the Tribunal as 25 years, for which relevant multiplier is 18 as per the decision of the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**^[1], therefore, even applying multiplier factor '18' also cannot be faulted.

13. The Tribunal, somehow, did not look at the future prospects. Since it is not an appeal preferred by the claimants and no cross-objections have been made, the compensation of Rs.4,59,000/- granted by the Tribunal cannot be construed as excessive.

14. So far as rate of interest at 9% per annum granted by the Tribunal is concerned, in view of the decision of the Hon'ble Supreme Court in **Rajesh v. Rajbir Singh**^[2], the same is reduced to 7.5% per annum from the date of petition till realization. Except reducing the rate of interest, the order under challenge is confirmed in all other aspects.

15. The Civil Miscellaneous Appeal is, thus, allowed in part, as indicated above. There shall be no order as costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal stand disposed of.

A. SHANKAR NARAYANA, J

July 21, 2016.

[\[1\]](#) (2009) 6 SCC 121
[\[2\]](#) 2013ACJ1403 = 2013(4)ALT35