HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.849 OF 2009

JUDGMENT:

The present Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), is preferred by respondent No.2 viz., Andhra Pradesh State Road Transport Corporation (for short 'APSRTC'), through its Managing Director, in M.V.O.P. No.381 of 2006, whereas respondent No.1, who is respondent No.5 herein, is driver of the APSRTC bus bearing No.AP-11-Z-3640 that involved in the accident, aggrieved of the order and decree therein, dated 28.11.2008, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - I Additional District Judge, Krishna, Machilipatnam (for short 'Tribunal'), whereby and whereunder, a sum of Rs.3,70,000/- was granted towards compensation with interest at 7.5% per annum for the death of one Damerla Basavaiah, whose wife, minor children and mother are petitioners - claimants, who are respondent Nos.1 to 4 herein, as against their claim of Rs.4,00,000/- laid under Section 163-A of the Motor Vehicles Act, 1988 (for short 'the Act').

2. For the sake of convenience, the parties are hereinafter referred to as arrayed in the O.P. before the Tribunal.

3. The facts, in brief, are that during the early hours of 16.09.2006, near the APSRTC bus stand, Challapalli, one Damerla Basavaiah was proceeding on a bicycle along with Akula Venkateswararao, who was sitting behind, from

Pedaprolu Village to Challapalli, an APSRTC bus bearing registration No.AP-11-Z-3640 driven by its driver in a rash and negligent manner, hit the cycle of Basavaiah, due to which, he fell down on the road and, in fact, he was dragged to some distance and left front wheel of the bus ran over his head resulting in his instant death. The police concerned registered a case in Crime No.140 of 2006 against the driver of the bus. Therefore, the petitioners claimed a sum of Rs.4,00,000/- towards compensation.

4. Respondent No.1, driver of the APSRTC bus that involved in the accident, remained *ex parte* before the Tribunal.

5. Respondent No.2 - APSRTC, opposed the claim.

6. The Tribunal framed as many as five (5) issues in order to fix liability in taking place of the accident and to determine compensation to which the petitioners are entitled.

7. During enquiry, on behalf of the petitioners, PWs.1 to 3 were examined and Exs.A-1 to A-5 were

marked. On behalf of the APSRTC, no witnesses were examined and no documents were filed.

8. Perused the order and decree under challenge and the evidence on record.

9. The Tribunal held all the issues in favour of the petitioners awarding compensation of Rs.3,70,000/- with interest at 7.5% per annum and apportioning the same among the petitioners.

10. The aforesaid order is under challenge in the instant appeal by the APSRTC, mainly contending that the Tribunal was not right in fixing the income of the deceased at Rs.2,500/- per month basing on Ex.A-5 certificate and that the Tribunal ought to have fixed income as per Schedule - II to Section 163-A of the Act and ought to have applied multiplier '15' instead of '18' in view of the decision of this Court in **Bhagwandas v. Md. Arif**[1] and yet another decision in **United India Insurance Company Limited, Hyderabad v. Narala Venkata Subbamma**[2].

11. Heard Sri P. Durga Prasad, learned standing counsel for the APSRTC (appellant).

12. There is no representation for the petitioners (claimants), though, Sri T.V.S. Prabhakar Rao, learned

counsel, made appearance on their behalf.

13. It is endorsed in the cause title of the grounds of appeal that respondent No.5, driver of the APSRTC bus that involved in the accident, is not a necessary party, as such, there is no impediment to proceed further in the absence of respondent No.5

14. Perused the order and decree under challenge and the evidence on record, both, oral and documentary, let in by the petitioners.

15. It is true that the multiplier factor ought to be ‘17’ but not ‘18’ since the deceased was treated by the Tribunal as ‘30’ years old at the relevant time. Be that as it may, since the petitioners are numbering four (4), who are dependants on the deceased, the permissible deduction towards personal expenses is 1/4th, but not 1/3rd, in view of the decision of the Hon”ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**[3]. This apart, no amount was granted by the Tribunal towards future prospects. When viewed these two circumstances, certainly, the amount of Rs.3,60,000/- arrived at by the Tribunal towards loss of dependency cannot be faulted. Even the Tribunal has granted meager amounts towards conventional amounts i.e., Rs.2,500/- towards funeral expenses, Rs.5,000/- towards loss of consortium and Rs.2,500/- towards loss of estate.

16. Thus, viewed from any angle, there is absolutely no merit in the appeal. Even the rate of interest granted by the Tribunal at 7.5% per annum is in tune with the interest awarded by the Hon'ble Supreme Court in **Rajesh v. Rajbir Singh**[4].

17. For the aforesaid reasons, the Civil Miscellaneous Appeal is dismissed confirming the order under challenge. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

July 26, 2016.
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1. 1987(2) ALT 137

2. 2008(2) ALD 814.

1. (2009) 6 SCC 121
2. 2013ACJ1403 = 2013(4)ALT35