

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1388 OF 2009

JUDGMENT:

Aggrieved by the award and decree, dated 26.06.2006, passed in O.P.No.93 of 2005 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, West Godavari District at Eluru (for short, 'the Tribunal'), whereby and whereunder a sum of Rs.5,55,100/- was granted as compensation, as against the claim of Rs.8,00,000/- laid under Section 166 of the Motor Vehicle Act, 1988 (for short, 'the Act'), the present appeal is preferred by the 2nd respondent, Vice-Chairman of the erstwhile Andhra Pradesh State Road Transport Corporation Limited, on the main ground that the Tribunal went wrong in appreciating the manner in which the accident did occur, overlooking the fact that there was contributory negligence on the part of Mullapudi Brahmajirao (deceased) to the accident, and it ought to have applied multiplier '5', instead of '11' for the age of the deceased, and, as such, compensation of Rs.5,55,100/- granted by the Tribunal is excessive and exorbitant.

2. The appellant herein is the 2nd respondent, while respondent Nos.1 to 3 herein, who are the wife and

children of the deceased, were the petitioners-claimants, respectively, in the original petition.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts would show that on 02.09.2004, while the said Mullapudi Brahmajirao (deceased) was proceeding on his Hero Majestic motorcycle bearing No. AHN 5309 from Chebrole to Narayanapuram and reached Narayanapuram High way bridge, at about 10.15 a.m., an RTC bus bearing No.AP 11 Z 3262, driven by its driver in a rash and negligent manner, hit the motorcycle, due to which, the motorcyclist (deceased) died. The claimants, being the legal representatives of the deceased, stating that the deceased, aged 53 years, was working as Senior Railway Trackman earning Rs.7,000/- per month and contributing the entire amount to the family, sought a compensation of Rs.8,00,000/-.

5. Respondent No.1, the driver of the RTC bus, remained *ex parte*. Respondent No.2 opposed the claim by raising various pleas and, in fact, attributed rash and negligent driving to the motorcyclist, by referring to certain events.

6. Basing on the said pleadings, the Tribunal

framed four issues about the responsibility for the accident.

7. During enquiry, P.Ws.1 to 3 were examined and Exs.A1 to A6 were marked, besides marking Exs.X1 and X2. On behalf of the respondents, the driver of the bus was examined as RW.1, but no documents were marked.

8. On issue No.1, the Tribunal, on appraisal of evidence, recorded a finding in favour of the petitioners holding that due to rash and negligent driving of R.W.1, the accident has occurred, discarding the stand taken by respondent Nos.1 and 2 in the direction of attributing rash and negligent driving to the deceased by elaborately dealing with the evidence on record.

9. On issue No.2, the Tribunal, having taken the net salary of the deceased at Rs.6,200/- per month and placing reliance on certain decisions of the Hon'ble Supreme Court, made deduction at 1/3rd there from towards personal expenses, applied multiplier '11' and arrived at Rs.5,55,100/- as total compensation, which includes Rs.5,000/-, Rs.2,500/- and Rs.2,000/- towards conventional sums, with interest at 7.5% per annum.

10. It is the aforesaid order which is under

challenge in the instant appeal on the grounds already stated above. It is stated in the grounds of appeal that respondent No.4 is not a necessary party and the same is endorsed in the cause title.

11. Heard Sri S.V.Ramana, learned Standing Counsel appearing for the appellant, and Sri Y.Gopal Reddy, learned counsel for respondent Nos.1 to 3.

12. Perused the order under challenge and the evidence on record, both, oral and documentary, let in by the petitioners and the evidence of R.W.1, who is respondent No.1 in the claim petition.

13. Though, the learned counsel for the Corporation made an attempt to show that there is evidence to prove that there was contributory negligence on the part of the deceased, the reasons assigned by the Tribunal in rejecting that stand on the main ground that respondent No.2 had not filed the S.R of the bus and there was no explanation given by respondent No.2 for not filing the S.R and also non-examination of one G.Ramamohana Reddy, who is said to be an eye-witness, were sufficient enough to reject the stand of contributory negligence pleaded by the Corporation.

14. So far as determination of compensation is concerned, in fact, as seen from the evidence on record,

Ex.A5 reflects that the deceased was drawing salary of Rs.7,014/- per month and the Tribunal has taken the carry home salary at Rs.6,208/-, in view of the law then in vogue. The Tribunal has considered the age of the deceased as 54 years and applied multiplier '11' in accordance with the multiplier factor provided in Second Schedule to Section 163-A of the Act. Even as per the decision of the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**^[1], the relevant multiplier is '11' for the age of the deceased. Thus, the amount of Rs.5,45,600/- towards loss of dependency, arrived at by the Tribunal, does not suffer from any infirmity. In fact, the petitioners being the legal representatives are entitled to the compensation determined on the basis of the gross salary by excluding statutory deductions and, in addition thereto, 50% towards future prospects also and, thus, if the law laid down by the Hon'ble Supreme Court in the recent past is applied, certainly, the petitioners would be entitled to more than what was granted by the Tribunal. Hence, there is no merit in the instant appeal.

15. Accordingly, the appeal is dismissed, confirming the award and decree passed by the Tribunal

in all respects, including the rate of interest. No order as to costs.

16. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, shall stand closed.

A. SHANKAR NARAYANA, J

03rd August, 2016

v v

[\[1\]](#) (2009) 6 SCC 121