

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.2686 OF 2009

JUDGMENT:

The appellants, who are the claimants in O.P.No.124 of 2007 on the file of Chairman, Motor Accidents Claims Tribunal – cum – Additional District Judge, Hindupur, preferred the instant appeal aggrieved by the order and decree, dated 20.12.2008, passed in the said O.P., dismissing the claim petition filed under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.4,00,000/- for the death of one R. Jagadeeswar Reddy, who is the son of appellant Nos.1 and 2 and brother of appellant No.3, in a road accident.

2. The appellants are the petitioners, whereas respondent Nos.1 and 2, who are the owner and insurer of the offending vehicle, are respondent Nos.1 and 2 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 18.08.2006 at about 01:30 PM, while one R. Jagadeeswar Reddy along with one Rajasekhar Reddy was proceeding on a motorcycle from Kadiri to Mamillakunta, a private bus bearing registration No.KA-06-A-3175 driven in a rash and negligent manner came in opposite direction and dashed the motorcycle, due to which, the said Jagadeeswar Reddy sustained head

injury. He was immediately shifted to Government Hospital at Kadiri and from there he was referred to Commandant Hospital, Bangalore. But, however, while undergoing treatment, he succumbed to injuries on 20.08.2006. Claiming that the deceased was working in Army at Haridwar and drawing salary of Rs.7,000/- per month and on account of his death, the petitioners, who are the parents and younger brother of the deceased, respectively, lost dependency, sought a sum of Rs.4,00,000/- as compensation.

5. Respondent No.1, owner of the bus, remained *ex parte* before the Tribunal.

6. Respondent No.2 - insurer filed counter and opposed the claim raising usual pleas, but no specific violation by respondent No.1 was complained.

7. The Tribunal, basing on the pleadings, framed three issues, in order to ascertain liability and determine the compensation.

8. During enquiry, petitioner No.1 examined himself as PW.1, besides examining a passenger travelling in the bus as PW.2 and marked Exs.A1 to A7. On behalf of respondent No.2, one P. Thyagaraju, an official from the local branch of the Company, was examined as RW.1 and Exs.B1 to B6 were marked.

9. The Tribunal, appreciating the evidence on record, believing the 161 Cr.P.C. Statements under Exs.B2 to B5, and opining that the

deceased, in fact, was driving the motor cycle and while attempting to overtake a lorry, dashed the bus coming in opposite direction, held that no liability can be fastened on the Insurance Company, as there was negligence on the part of the deceased himself, and thereby, dismissed the claim petition.

10. It is the aforesaid order, which is under challenge in the instant appeal by the petitioners mainly on the ground that the Tribunal erred in relying on Ex.A1 and Exs.B2 to B5 and thus, sought to grant the compensation claimed in the O.P.

11. Heard Sri O. Manohar Reddy, learned counsel for the appellants.

12. Despite service of notice on respondent Nos.1 and 2, none appears for them.

13. Perused the evidence and material on record.

14. There appears to be glaring error in the finding recorded by the Tribunal. The reasons being, firstly, the Tribunal without examining the witnesses, who made the statements under Section 161 Cr.P.C., by the Insurance Company, accepted the statements under Exs.B2 to B5 and arrived at a wrong conclusion and second, the contents in the charge sheet and to some extent, F.I.R. also support the case of the petitioners. The charge sheet was filed by the concerned Investigating Officer against the driver of the bus on completion of

investigation arriving at a *prima facie* opinion that on account of the rash and negligent driving of the bus driver, the accident did occur. The Tribunal, while discussing the evidence on record, mostly looked at Exs.B2 to B5 rather than looking at Ex.A2 - charge sheet averments and the contents of Ex.A1 – FIR. Even assuming that the finding recorded by the Tribunal is to some extent correct, still, viewing it as a direct collision contributing to the accident, ought to have apportioned the negligence/liability to both the drivers i.e., bus and motor cycle. This apart, though, it is well settled that the Tribunal, even arrives at the conclusion to dismiss the claim petition, still, obligated to determine the compensation, but it did not endeavour to determine the compensation by applying the structural formula.

15. The accident took place on 18.08.2006. The present appeal was preferred in the year 2009. On the mere ground that the Tribunal did not determine the compensation, if the matter is remitted to the Tribunal, it would be further delaying disposal of the claim petition, since the evidence relevant for determining the compensation is already placed on record.

16. Learned counsel for the petitioners/appellants would submit that the deceased was serving the defence even on the date of accident. The mere fact that the deceased was referred to Commandant Hospital at Bangalore, which is intended to treat the defence personnel, is suffice to show that the deceased was serving the defence even on the date of accident. Certainly, the same can be

accepted for the reason that unless he was a defence personnel, there would be any occasion for referring him to Commandant Hospital and Commandant Hospital admitting him. This apart, the computerised statement of salary relating to the period from 25.01.2004 to 01.01.2006, marked as Ex.A7, would show the Basic Pay, Dearness Allowance, PMHA, LRA of the deceased and it shows that he was drawing salary of Rs.6,482/- per month. Since the deceased died in unmarried status, in view of the law declared by the Honourable Supreme Court in **Sarla Verma v. Delhi Transport Corporation**¹ and **Rajesh and others v. Rajbir Singh and others**², 50% thereof has to be deducted towards his personal living expenses. Thus, the contribution of the deceased to his family works out to Rs.3,241/- per month or Rs.38,892/- per annum. The relevant multiplier factor is '18'. When capitalized, it works out to Rs.7,00,056/-. Therefore, the appellants are entitled to the said amount towards loss of dependency. Since the father is alive, future prospects cannot be granted. Towards funeral expenses, a sum of Rs.10,000/- is granted. Thus, the petitioners are totally entitled to Rs.7,10,056/-. Petitioner No.3, being the younger brother, in the presence of father, who is petitioner No.1, cannot be construed as dependant on the deceased. Thus, petitioner Nos.1 and 2 are entitled to Rs.7,10,056/- with interest at 7.5% per annum, which is in tune with the rate of interest at 7.5% per annum awarded by the Honourable Supreme Court in

¹ (2009) 6 SCC 121

² (2013) 9 SCC 54

Rajesh and others v. Rajbir Singh and others³. The compensation amount is apportioned equally between the petitioner Nos.1 and 2. The appeal against petitioner No.3 stands dismissed.

17. Accordingly, the appeal is allowed in part. Miscellaneous Petitions, if any, pending in this appeal, shall stand closed. There shall be no order as to costs.

A. SHANKAR NARAYANA, J

December 26, 2016
MD



³ (2013) 9 SCC 54