

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

MACMA.No.1418 of 2009

JUDGMENT:

Having got dissatisfied with the award and decree, dated 07.08.2003, in O.P.No.394 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Karimnagar, whereby and whereunder a compensation of Rs.2,13,000/- was granted as against the claim of Rs.4,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988, for the death of one Mallesham, who is the husband of petitioner No.1, father of petitioner No.2 and son of petitioner Nos.3 & 4, the present appeal is preferred by the petitioners – claimants seeking to grant the balance amount.

2. The appellants herein are the petitioners, while respondent Nos.1 & 2, who are the driver and the General Manager of the erstwhile Andhra Pradesh State Road Transport Corporation, are respondent Nos.1 & 2 and that respondent Nos.3 to 5, who are the driver, owner and the insurer of the lorry bearing registration No. AP 15 4737, are respondent Nos.3 to 5, 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 fact-situation would show that one Mallesham (deceased) was working as a cleaner of the lorry bearing registration No. AP 15 T 4737. On 23.03.2000 at about 5.00 a.m., he sat on the said lorry, which was loaded, to check the load and when it was proceeding from Korutla to Metpalli and reached Arepet village bus stop, since its driver drove it in a rash and negligent manner, the said Mallesham fell down on the PWD road, during which time an RTC bus bearing registration No.AP 10 Z 7094, coming in opposite direction driven at high speed, ran over him, due to which he received injuries to his thigh and head. He was immediately shifted to Government Hospital, Metpalli, but he succumbed to injuries on the same day itself in the Hospital at 6.30 a.m. The legal representatives of the deceased filed the claim petition against the driver and the General Manager of RTC arraying them as respondent Nos.1 and 2 and also the driver, owner and insurer of the lorry as respondent Nos.3 to 5, seeking compensation of Rs.4,00,000/- from respondent Nos.1 to 5.

5. Respondent Nos.1 and 2 filed counters strongly opposing the claim by attributing negligence to the deceased himself and the driver of the lorry and, thereby, sought to dismiss the claim petition against them.

6. Respondent Nos.3 and 4 have not filed counters and it appears, they were recorded as not necessary parties.

7. Respondent No.5 – Insurance Company filed counter attributing rash and negligent driving to respondent No.1, who was the driver of the bus and, thus, sought to dismiss the claim petition against it.

8. Basing on the said pleadings, the Tribunal framed three issues.

9. During enquiry, petitioner No.1 examined herself as P.W.1, besides examining an eye-witness as P.W.2, and marked Exs.A1 to A5. On behalf of the Corporation, respondent No.1 examined himself as R.W.1. Though, no witnesses were examined on behalf of the Insurance Company, a copy of the insurance policy was marked as Ex.B1 on consent.

10. The Tribunal, on appraisal of evidence on issue No.1, held that due to rash and negligent driving of respondent No.3 – driver of the lorry, the accident had occurred, by considering the evidence of P.W.1 elaborately dealing with the fact-situation and the probabilities derived from the proved facts. However, the said finding is not under challenge, since no appeal is preferred by the insurance company.

11. On issue No.2, for want of proof by documentary evidence as to the definite earnings of the deceased, taken notional annual income at Rs.15,000/-, deducted 1/3rd there-from towards personal expenses and, placing reliance on the decision of this Court in **Bhagwan Das v. Mohd.**

Arif¹, applied multiplier '17.95' and assessed the loss of dependency at Rs.1,79,500/-. Besides the same, the Tribunal has also awarded Rs.15,000/- towards consortium, Rs.15,000/- towards loss of estate, Rs.2,500/- towards funeral expenses and Rs.1,000/- towards transportation of the dead body. Thus, the Tribunal awarded a total compensation of Rs.2,13,000/- with interest at 9% per annum.

12. The aforesaid order is now questioned on the ground that meagre compensation was granted and, therefore, sought to grant the balance amount.

13. Heard Sri I.Laxmikantha Rao, learned counsel for the appellants, and Sri G.Vishweshwar Reddy, learned counsel for respondent No.5. By order dated 15.12.2008, the appeal was dismissed for default against respondent No.3 - driver of the lorry, who suffered decree. None appears for respondent No.4. Though, service was completed on respondent Nos.1 & 2, none appears for them.

14. Perused the order and material on record.

15. Even when an amount of Rs.15,000/- is taken as annual notional income of the deceased, as was considered by the Tribunal, deduction of 1/4th thereof is permissible, since the dependants are four in number, in which case the remainder would be Rs.11,250/-. When the same is multiplied with multiplier '18", as the deceased was aged 25

¹ 1987 (2) ALT 137

years, in view of the decision of the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**² the loss of dependency works out to Rs.2,02,500/-. The petitioners are also entitled to future prospects at 50% of loss of dependency calculated and the same works out to Rs.1,01,250/-. Thus, the total loss of dependency works out to Rs.3,03,750/-. This apart, the petitioners are also entitled to a conventional sum of Rs.50,000/- as per the decision of the Hon'ble Supreme Court in **Ramilaben Chinubhai Parmar Vs. National Insurance Company**³.

16. Thus, the petitioners are entitled to a total compensation of Rs.3,53,750/-, as against Rs.2,13,000/- granted by the Tribunal, and the same is accordingly granted.

17. So far as the rate of interest is concerned, the Tribunal granted the same at 9% per annum and the same is maintained on the compensation of Rs.2,13,000/- granted by the Tribunal. However, on the enhanced amount, interest at 7.5% per annum is granted from the date of petition till realisation in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**⁴. The enhanced amount is directed to be apportioned in proportion to the apportionment made to the petitioners by the Tribunal.

² (2009) 6 Supreme Court Cases 121

³ LAWS (SC) -2014-4-67

⁴ 2013 ACJ 1403

18. Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation with interest, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

19. Miscellaneous petitions, if any pending in the instant appeal, shall stand closed.

JUSTICE A.SHANKAR NARAYANA

23.08.2016

v v

