THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.CMA.No.265 OF 2009

JUDGMENT:

The present appeal is preferred by respondent No.2 - Road Transport Corporation of erstwhile Andhra Pradesh State in M.O.P.No.786 of 2001 on the file of IV Additional District Judge, Visakhapatnam, aggrieved by the order and decree, dated 20.06.2003, passed in the said O.P., whereby and whereunder, a sum of Rs.7,17,000/- was awarded towards compensation for the death of one Golechha Santhilal Jain, as against the claim of Rs.30,07,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the legal representatives of the deceased Golechha Santhilal Jain.

2. The appellant – Corporation is respondent No.2, whereas respondent Nos.1 to 6 are the petitioners and respondent No.7, driver of the R.T.C. bus that involved in the accident, is respondent No.1 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 23.06.2000, while one Golechha Santhilal Jain along with his wife, children and relative was proceeding in a Maruthi Van bearing registration No.AP-31-H-1437 to go to Rushikonda for picnic, at about 09:45 AM, when they crossed

the Forest Guest House Hill Curve, an R.T.C. bus bearing registration No.AP-09-Z-1506 driven by respondent No.1 at high speed in a rash and negligent manner dashed the Matuthi Van, due to which impact, the van turned upside down resulting in injuries to the inmates of the Van and ultimately, the said Golechha Santhilal Jain succumbed to the injuries, while undergoing treatment in C.D.R. Hospital.

5. The petitioners, claiming that the deceased was 34 years on the date of accident running business in the name and style 'Priyadarshini Cloth Stores' earning Rs.30,000/- per month and was an income tax assesse, sought a sum of Rs.30,07,000/- as compensation under Section 166 of the Act from respondent Nos.1 and 2 jointly and severally.

6. Respondent No.1, driver of the R.T.C. bus, remained *ex parte* before the Tribunal.

7. Respondent No.2 – Corporation filed counter opposing the claim by raising various pleas.

8. Based on the said pleadings, in the direction of accounting for responsibility about the accident, the Tribunal has framed three issues.

9. During enquiry, petitioner No.1 examined herself as PW.1 and marked Exs.A1 to A5 to substantiate the claim laid. On behalf of the respondents, Respondent No.1 examined himself as RW.1 in order

to get over the rash and negligent driving attributed to him, but no documents were filed.

10. The Tribunal, on appraisal of evidence of PW.1 and RW.1 supported by the documentary evidence Exs.A1 to A3, recorded a definite finding that due to the rash and negligent driving of RW.1, the accident had taken place resulting in the death of deceased Golechha Santhilal Jain and accordingly, favoured the petitioners on issue No.1.

11. As regards determination of compensation, the Tribunal, taking into consideration the income tax returns of the deceased relating to the years 1995 – 96 and 1997 – 98, fixed the income of the deceased at Rs.60,000/- per annum and by deducting 1/3rd therefrom towards his personal expenses, arrived at Rs.40,000/- as annual contribution to the family, and taking the age of the deceased as 34 years, by applying multiplier '17', worked out the loss of dependency at Rs.6,80,000/-. Besides the same, the Tribunal has also granted Rs.15,000/- towards loss of consortium, Rs.20,000/- towards loss of estate and Rs.2,000/- towards funeral expenses and thus, awarded a total sum of Rs.7,17,000/- as compensation with interest at 9% per annum from the date of petition till realisation.

12. It is the aforesaid order which is under challenge in the instant appeal preferred by the Corporation mainly on the ground that, though, Ex.A4 shows the average income of the deceased as Rs.50,000/- per annum, the Tribunal was not right in taking the annual

income of the deceased at Rs.60,000/-. It is also stated that the Tribunal ought not to have granted Rs.15,000/- towards loss of consortium and thus, sought to set aside the order and decree under challenge.

13. Heard Sri S.V. Ramana, learned counsel for the appellant – Corporation, and Sri K. Sarvabhouma Rao, learned counsel for respondent Nos.1 to 4. Respondent No.5, father of the deceased, died during pendency of the appeal. Respondent No.6, mother of the deceased, died during pendency of the O.P. The appellant has endorsed in the cause title that respondent No.7, driver of the R.T.C. bus, is not necessary party to the appeal.

14. Though, learned counsel for the appellant would submit that the Tribunal ought not to have taken the annual income of the deceased as Rs.60,000/-, a perusal of Ex.A4, which consists of income tax returns and assessment orders passed by the Assistant Commissioner of Income Tax for the years from 1988-89, till the year 2000-01, would clinchingly establish that the income of the deceased was ranging from Rs.29,630/- in the year 1989 to Rs.97,680/- in the year 2001 and an amount of Rs.6,597/- was also paid as tax during the Assessment Year 2000-01. In that view of the matter, certainly, it is to be held that there is no merit in the appeal and the grounds agitated are totally unsustainable for the reasons, firstly, that the Tribunal, in fact, ought to have taken the income of the deceased as per the income

tax returns filed for the assessment year 2000-01, which shows the income of the deceased as more than Rs.90,000/-, though, the income tax return was filed subsequent to the death of the deceased, second, in view of the latest pronouncements of the Honourable Supreme Court, 1/4th deduction is permissible towards personal expenses of the deceased and, third, the petitioners are also entitled to future prospects, when there is consistency in the income earned by the deceased right from the year 1989-90 till the date of accident. In that view of the matter, the compensation awarded by the Tribunal cannot be construed as excessive or arbitrary.

15. Concerning the rate of interest, the Tribunal has awarded interest at 9% per annum, but the same is required to be reduced to 7.5% per annum in view of the decision of the Honourable Supreme Court in **Rajesh and others v. Rajbir Singh and others**[1] and accordingly, the same is reduced to 7.5% per annum.

16. With the aforesaid modification, 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

July 28, 2016.
MD

[1] (2013) 9 SCC 54