

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A.C.M.A. No.1538 OF 2005

JUDGMENT:

The Instant appeal is preferred by the erstwhile Andhra Pradesh State Road Transport Corporation (APSRTC), respondent in O.P. No.53 of 2002, aggrieved by the order and decree, dated 15-03-2005, passed by the learned Chairman, Motor Accidents Claims Tribunal – cum – V Additional District and Sessions Judge, Nalgonda at Miryalguda (for short 'the Tribunal'), whereby and whereunder a sum of Rs.1,73,000/- was awarded as compensation as against the claim of Rs.2,00,000/- made by the petitioner under Section 166 read with 140 of the Motor Vehicles Act, 1988 (for short 'the Act') seeking to set aside the same on the ground that the Tribunal without there being any basis granted the said compensation just believing the evidence of sole eye-witness examined as PW.2.

2. The appellant herein is the respondent in O.P. before the Tribunal and respondent is the petitioner.

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 02-11-1995 at about 1.00 p.m., while one Pitchamma, who was the deceased, was standing at the Khammam point in the bus stand waiting for bus to go to Rainipalem village, an RTC bus bearing registration No.AEZ 3244 driven by its driver at high speed in a rash and negligent manner, suddenly came up to Khammam point and hit passengers

standing at that point, in which accident, Smt. Pitchamma sustained injuries and she was shifted to Government Hospital, Miryalguda, where she was succumbed to injuries on the same day at 4.00 p.m.

i) The Station House Officer, Miryalguda (Town) Police Station registered a case in Crime No.151 of 2001 under Section 304-A IPC against the driver of the bus.

ii) The petitioner, who is the son of the deceased, claiming that the deceased was earning Rs.3,000/- per month as a labourer and looking after the maintenance, sought the aforesaid amount.

5. Respondent – Corporation filed counter opposing the claim by raising various pleas, attributing negligence to the deceased herself and disputed the earnings of Rs.3,000/- per month by the deceased.

6. Basing on the said pleadings, the Tribunal has framed the following three issues about the responsibility for the accident.

“ (i) *Whether the deceased Gogula Pitchamma died in an accident due to rash and negligent driving by the driver of RTC bus bearing No.AEZ 3244?*

(ii) *Whether the petitioner is entitled for compensation, if so, what is the quantum of amount?*

(ii) *To what relief? ”*

7. During inquiry, the petitioner examined himself as PW.1, besides examining his sister as PW.2 and marked Exs.A-1 to A-5 in order to substantiate his claim. On behalf of respondent, no witnesses were examined and no documents were filed.

8. The Tribunal, on issue No.1, on appraisal of evidence on record, held it in favour of the petitioner. On issue No.2, the Tribunal having found that the second witness examined as PW.2 is no other than the daughter of the deceased and was accompanying the deceased at the relevant time, construed her as dependant and fixed the annual income at Rs.18,000/- per annum as against Rs.36,000/- per annum claimed by the petitioner and deducted 1/3rd there-from, taken the contribution at Rs.12,000/- per annum and the age as 50 years and applying multiplier '13' arrived at Rs.1,56,000/- towards contribution, besides granting Rs.15,000/- towards loss of estate and Rs.2,000/- towards funeral expenses and, thus, granted a total sum of Rs.1,73,000/- as compensation with interest at 9% per annum thereon, and apportioned the same to the petitioner by granting a sum of Rs.1,13,000/- and the balance of Rs.60,000/- to PW.2.

9. It is the aforesaid order which is under challenge in the instant appeal filed by the respondent - Corporation on the ground that the Tribunal went wrong in attributing rash and negligent driving to the driver of the bus instead viewing that the deceased was negligent that occasioned for taking place of accident resulting her death. It is stated that the Tribunal also went wrong in construing the deceased as labourer without any evidence being let in. It is also stated that the amount of Rs.1,73,000/- granted by the Tribunal is high and excessive and, therefore, sought to set aside the award and decree.

10. Heard Sri A. Ravi Babu, learned Standing Counsel for the appellant – APSRTC, and Sri N. Ashok Kumar, learned

counsel for the respondent – petitioner.

11. Perused the order under challenge and the evidence on record, both, oral and documentary, let in by the petitioner.

12. The learned counsel for the appellant – respondent contended that the amount granted by the Tribunal is excessive. As seen from the order, the Tribunal taken the occupation of the deceased as labourer, but, however, fixed the annual income at Rs.18,000/- as against Rs.36,000/- claimed by the petitioner and her age as 50 years recorded in the medical records and thereby granted the amounts as mentioned in the above. Though, the petitioner cannot be strictly construed as dependant, still, can be viewed that he lost services of the deceased on domestic side. When viewed, in that perspective, the amount of Rs.1,73,000/- granted by the Tribunal cannot be construed as excessive, as the same was apportioned between the petitioner and his younger sister, who is examined as PW.2, though, PW.2 ought to have brought on record as petitioner No.2, but, still, the said direction cannot be faulted with. However, rate of interest granted by the Tribunal at 9% per annum has to be reduced to 7.5% per annum on the amount awarded by the Tribunal in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[1]. Except the same, there is no merit in the instant appeal.

13. Accordingly, the appeal is allowed in part to the extent of reducing the rate of interest from 9% per annum to 7.5% per annum on the amount awarded by the Tribunal. Except to the said

extent, the order and decree passed by the Tribunal, in all respects, are confirmed.

14. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

February 08, 2016.
Mgr

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