HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1716 OF 2005
AND
CROSS OBJECTION (SR) No.38127 OF 2006
in
M.A.C.M.A. No.1716 of 2005

COMMON JUDGMENT:

The present appeal is preferred by respondent Nos.1 and 2 - Depot Manager, Visakhapatnam Depot, Andhra Pradesh State Road Corporation and its Chairman and Managing Director, Hyderabad, aggrieved by the order and decree, dated 03-12-2004, in M.O.P. No.868 of 2002, passed by the learned Chairman, Motor Accident Claims Tribunal - cum - III Additional District Judge, Visakhapatnam (for short 'the Tribunal'), whereby and where-under, a sum of Rs.5,49,210/- was awarded as compensation for the death of one Yenni Apparao, the husband of petitioner No.1, son of petitioner No.3 and father of petitioner Nos.2 and 4, as against the claim of Rs.8,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') read with Rule 455 of Andhra Pradesh Motor Vehicles Rules, 1989.

2. In fact, the judgment of the Tribunal in page No.2 would reflect that the said Appa Rao was survived by wife and three children and, of course, his father, who is petitioner No.3. But, apportionment column shows that compensation was apportioned among petitioner Nos.1 to 5, but, somehow, cause title does not disclose the number of petitioners as '5', as names are given with serial number indicating that there

are only four petitioners. However, it got resolved in view of the amendment introduced at the appellate stage in the instant appeal by bringing Yenni Bhaskar Rao as one of the legal heirs of the deceased. Thus, it looses significance in the present context of deciding the request made in the instant appeal.

3. The appellants herein, who are owner of an RTC bus bearing registration No.AP 11Z 453 are respondent Nos.2 and 3 in MOP before the Tribunal, while its driver is respondent No.1 and respondent Nos.1 to 4 and respondent No.6 are petitioners, who are wife, children and father of deceased Yenni Apparao.

4. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in MOP before the Tribunal.

5. The facts, in brief, would reveal that on 04-10-2001, at about 9.00 p.m. one Yenni Apparao boarded a bus at Birla Junction plying on route No.38 to go to his place situate at Maddilapalem, and on reaching Gurudwara Junction, the bus was stopped at the signal point. With a view to catch another bus, he got down from the said bus and while he was crossing the road to reach other side and as the green signal was on, an RTC bus bearing registration No.AP 11Z 453 plying on route No.38D, without properly observing the said Yenni Apparao, who stood in the middle of the road while crossing, since drove it in a rash and negligent manner by respondent

No.1, hit his shoulder, due to which, he could lose the balance and fell down and soon thereafter its rear wheel ran over the head causing his instant death.

i) The concerned police completed the relevant formalities. The petitioners claiming that the deceased was working as Upper Division Clerk in EPDC/AP Department, drawing a sum of Rs.15,000/- per month, sought a sum of Rs.8,00,000/- as compensation.

6. The aforesaid claim was resisted by respondent Nos.2 and 3 - Corporation and their driver, who is respondent No.1, attributing negligence to the deceased himself and finally sought to dismiss the claim petition.

7. The Tribunal has framed three issues basing on the said pleadings.

8. During inquiry, petitioner No.1 examined herself as PW.1, besides examining two others as PWs.2 and 3, and marked Exs.A-1 to A-6. That apart, the petitioners got marked Exs.X-1 to X-3. On behalf of respondents, driver of the bus, who is respondent No.1, was examined as RW.1, besides examining two others as RWs.2 and 3 and marked Exs.B-1 and B-2.

9. The Tribunal having appraised the evidence on record through PW.2 and RW.1, in regard to the aspect of negligence, tendered a positive finding that due to rash and negligent driving of RW.1, the accident had occurred. On

issue No.2, the Tribunal, somehow, has taken the net salary of the deceased at Rs.5,559.20ps basing on the entries in Ex.A-4 and PW.3's evidence and placing reliance on the decisions submitted by the petitioners' side; arrived the annual income at Rs.66,710.40ps. The Tribunal having deducted 1/3rd there-from towards personal expenses, applying the multiplier '11' as the age of the deceased was 54 years, worked out the loss of dependency at Rs.4,89,210/-. That apart, the Tribunal has granted Rs.15,000/- towards loss of consortium to petitioner No.1; Rs.20,000/- towards loss of estate to the petitioners; Rs.15,000/- towards loss of love and affection to the petitioners 2, 4 and 5 and Rs.10,000/- towards funeral expenses, making a total compensation of Rs.5,49,210/-. The Tribunal has also awarded interest at 9% per annum and suitable directions as regards withdrawal and apportionment of amounts to each of the petitioners.

10. Aggrieved by the said order, respondent Nos.2 and 3 - Corporation preferred the instant appeal contending that the Tribunal has not properly appreciated the evidence of RWs.1 to 3 and at least ought to have attributed contributory negligence, and that the Tribunal has not deducted Rs.1,05,000/- already given to the petitioners towards accidental death benefit by the respondents, and the Tribunal ought not to have applied multiplier '11' provided in the second schedule as the annual earnings exceeded Rs.40,000/-, the cap provided and, therefore, sought to set aside the award and decree.

11. The petitioners - Cross-objectors, on the other hand, filed cross-objection (SR) No.38127 of 2006 in the instant appeal, mainly contending that the Tribunal ought to have taken Rs.9,995/- as the monthly earnings of the deceased as Ex.A-4 reflects the same, besides PW.3's evidence proving contents therein and ought to have applied multiplier '13' instead of '11' and interest at 12% ought to have granted and, thus, sought to grant balance amount.

12. Heard Sri S.V. Ramana, learned counsel for the appellants - Corporation, and Sri Rama Rao Ghanta, learned counsel for respondents Nos.1 to 4 and 6/Petitioners - Cross-objectors.

13. The learned counsel for the appellants would submit that evidence of RWs.1 to 3 proves the negligence of the deceased which is agitated as one of the main grounds in the grounds of appeal, and the very fact-situation also would reflect that the deceased contributed to the accident and finding recorded by the Tribunal thereon, therefore, warrants interference.

i) It is his next submission that, so far as earnings are concerned, the Tribunal ought to have taken carry-home salary and ought to have deducted Rs.1,05,000/- which was given already to the petitioners towards accidental death benefit by the Corporation, but the Tribunal, somehow, did not deduct the same and, therefore, sought to modify the order and decree passed by the Tribunal.

14. The learned counsel for the petitioners - cross-objectors would submit that the Tribunal ought to have taken the gross salary into consideration but not the net salary in view of the recent pronouncements and, therefore, sought to grant the entire amount.

15. Perused the order and material on record, both, oral and documentary, let in by the parties.

16. So far as the finding recorded by the Tribunal holding that due to rash and negligent driving of the bus driver (RW.1), the accident had taken place is well-reasoned and based on appreciation of evidence. The very fact that when the deceased stood on the road, while crossing the road to catch another bus having seen the green light of the signal was on, it was obligatory on the part of RW.1 to take all precautions to avert taking place of accident, which he did not do. Therefore, that finding does not suffer from any perversity warranting interference. Hence, the same is confirmed, rejecting the contention of the learned counsel for the appellants.

17. The next question that arises for consideration is, whether the amount granted by the Tribunal towards compensation is just, fair and reasonable?

18. The evidence of PW.3 and the entries in Ex.A-4, which is extract from the disbursement register duly attested, would, in fact, contain the relevant details for the month of

September, 2001 thus:

GROSS WAGES					
Period	Pay	VDA	HRA	CCA/CA	Total Wages
1	2	3	4	5	6
Sep. 2001	9995 + 7	2323	1999	180	14,504

RECOVERIES								Net amount passed [Sl.No.6–14]
GPF	LIC	GIS	Water Charges	Cycle/Motor Adv.	Marriage Advance	Prof. Tax	Total recoveries [Sl.7+13]	
7	8	9	10	11	12	13	14	15
1000	1074.80	30	1970	2670	2100	100	8994.80	5559-20

19. It is now well settled that it is not carry home salary that has to be treated as the earnings of the deceased for the purpose of determining the loss of dependency, but the gross salary minus statutory deductions that has to be taken in to consideration. However, even if the cross-objection raised by the petitioners - respondents is taken into consideration, according to them, the amount of Rs.9,995/- was the salary of the deceased basing on PW.3's evidence and entries in Ex.X-1, the same is now sought to be considered. It would be reasonable to accede to the request of the petitioners - respondents. When the same is taken into consideration after deducting Rs.100/- towards professional tax etc., it works out to Rs.1,18,740/- [Rs.9,895/- x 12]. The relevant multiplier is '11' as per the decision of the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**[1] since the deceased was 54 years on the date of accident, and when the multiplier factor '11' is applied, it works out to Rs.13,06,140/-[Rs.1,18,740 x 11]. Since the petitioners are numbering '5' in view of what has been stated in the

beginning itself, 1/4th there-from has to be deducted towards personal expenses of the deceased and when the same is done, it works out to Rs.9,79,605/- [Rs.13,06,140/- - Rs.3,26,535/-]. The said sum accounts for loss of dependency. But, in view of the decisions of the Hon'ble Supreme Court in **Sarla Verma's Case** (Supra 1) and **Rajesh and others v. Rajbir Singh and others**[2], the petitioners are also entitled to additional amount towards future prospects at the rate of 15% as the deceased was 54 years. It works out to Rs.1,46,941/- [Rs.9,79,605/- minus 15%]. Thus, when future prospects included the loss of dependency works out to Rs.11,26,546/- [Rs.9,79,605 + Rs.1,46,941/-]. The amount of Rs.60,000/- granted by the Tribunal under various heads is maintained, and when the same is added it works out to Rs.11,86,546/-, to which the petitioners are entitled.

20. It is no doubt true that the said amount far exceeds the claim of Rs.8,00,000/-, but there cannot be any embargo to grant the said amount in view of the settled proposition of law laid down by the Hon'ble Supreme Court in **Nagappa v. Gurudayal Singh & others**[3]**, Sri Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Company Limited**[4] and **Rajesh's Case** (Supra 2).

21. The Tribunal has granted interest at 9% per annum, the same is maintained on the amount of Rs.5,49,210/- granted by the Tribunal, and on the enhanced amount of Rs.6,37,336/-, the interest at 7.5% per annum is granted in view of the decision of the Hon'ble Supreme Court in **Rajesh's**

Case (Supra 2).

22. In view of the foregoing discussion, the appeal is dismissed and cross-objection (SR) is allowed, and the order and decree, dated 03-12-2004, passed by the Tribunal in M.O.P. No.868 of 2002 are modified enhancing the compensation to Rs.11,86,546/- (Rupees eleven lakhs eighty six thousand five hundred and forty six) from Rs.5,49,210/- with interest at 9% per annum on the amount granted by the Tribunal and at 7.5% per annum on the enhanced amount of Rs.6,37,336/- (Rupees six lakhs thirty seven thousand three hundred and thirty six) from the date of petition till realization. The compensation shall be apportioned among the petitioners in the same proportion in which the original compensation was directed to be apportioned and disbursed by the Tribunal. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

June 23, 2016.
Mgr

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[1]. (2009) 6 Supreme Court Cases 121

[2]. 2013 ACJ 1403

[3]. AIR 2003 SC 674

[4]. 2012 ACJ 191 (SC)