

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.32 of 2009

JUDGMENT:

Aggrieved by the Award dated 16.10.2008 in O.P.No.190 of 2007 passed by the Chairman, M.A.C.T-cum-II Additional District Judge, Madanapalle (for short 'the Tribunal'), the claimants preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of the claimants is that on 29.06.2007 at about 9.10 PM, the deceased—P.Venkataramana started on his scooty motorcycle bearing No.AP 03 H 3361 from his house to go to Neerugattuvaripalle and his brother also started on another motor bike bearing No.AP 03 H 3210 along with his uncle—Lakshminarasaiah and they were going straight on Madanapalle—Kadiri road and when the deceased was proceeding on left side of the road after passing Reddy's Colony, II cross, one Volva Garuda APSRTC bus bearing No.AP 28 Z 134 being driven by its driver in a rash and negligent manner at high speed, went and dashed behind the deceased vehicle due to which, the deceased fell down on the road and his vehicle fell on right side of the bus and was dragged upto 100 meters from the spot. In the resultant accident, the deceased sustained grievous injuries and died on the spot. It is averred that accident was occurred due to rash and negligent driving by the driver of RTC bus and due to sudden demise of the deceased, the claimants who are

his dependants became destitutes. On these pleas, they filed O.P.No.190 of 2007 under Section 166 of Motor Vehicles Act, 1988 (for short “the Act”) against respondent—APSRTC and claimed Rs.20,00,000/- as compensation.

b) The respondent/APSRTC filed written statement denying all the material averments made in the claim petition and urged to put the claimants to strict proof of the same. It contended that the accident was occurred due to rash and negligent driving by the rider of the TVS scooty as he came in the opposite direction and took sudden right turn and hit the bus and that the bus driver was driving the bus slowly with a minimum speed of 10 KMPH as the accident spot was a busy area and also the road was upgradient. It further contended that the O.P is bad for non-joinder of the insurance company of the TVS scooty bearing No.AP 03 H 3361 and thus prayed to dismiss the O.P

c) During trial, PWs.1 and 2 were examined and Exs.A1 to A9 were marked on behalf of claimants. RWs.1 to 3 were examined on behalf of respondent and Ex.X1—MVI report was marked.

d) The lower Tribunal on appreciation of both oral and documentary evidence fixed 50% contributory negligence on the deceased and ultimately awarded Rs.6,72,200/- as compensation against respondent with proportionate costs and interest @ 7.5% p.a. under different heads as below:

Loss of earnings	Rs. 6,55,200-00
Loss of consortium	Rs. 15,000-00

Funeral expenses	Rs. 2,000-00

Total	Rs. 6,72,200-00

Hence, the appeal by claimants.

3) The parties in the appeal are referred as they stood before the lower Tribunal.

4) Heard arguments of Sri T.Nagarjuna Reddy, learned counsel for appellants/claimants and Sri Aravala Rama Rao, learned Standing Counsel for APSRTC/respondent.

5a) Challenging the award, learned counsel for appellants/claimants firstly argued that Tribunal grossly erred in fixing 50% contributory negligence on the part of deceased in spite of cogent evidence placed by the claimants to the effect that bus driver (RW1) was solely responsible for the accident as he went behind the scooty of the deceased and hit the vehicle and dragged his vehicle upto 100 meters. Learned counsel vehemently argued that claimants examined PW2 an independent witness who clearly deposed that bus driver was at fault. In spite of it, the Tribunal having found from Ex.A9—rough sketch that deceased and the vehicle were on the right side of the road, agreed with the contention of the respondent that the deceased came in the opposite direction and suddenly took a turn towards his right side from the divider gap and dashed the right side bumper of the bus and thus contributed for the accident. Learned counsel forcibly argued that the contention of

the respondent/RTC and the evidence of RW1 that deceased came in the opposite side is palpably false because Ex.A1—FIR and Ex.A9—rough sketch and the evidence of PW1 would cumulatively indicate that deceased and his brother came from Reddy's Colony on their respective vehicles and took a left turn on to the main road leading from Madanapalle to Kadiri and when they were so proceeding, the crime bus went behind them at high speed and dashed the scooty of the deceased and thus caused the accident. He vehemently argued that bus driver was solely responsible for the accident. He submitted that the evidence would clearly depict that there was no occasion for the deceased to come in the opposite direction of the bus. However, the Tribunal on misconception and wrong appreciation of evidence held as if the deceased contributed to the accident.

b) Secondly, challenging the quantum of compensation as low, he argued that the Tribunal failed to take into consideration the future prospects of the deceased and thereby the compensation was drastically reduced.

c) Nextly, he submitted that in view of the fact that there are four claimants depending on the deceased the Tribunal ought to have deducted 1/4th instead of 1/3rd from his gross income basing on the decision of the Apex Court in ***Smt. Sarla Verma v. Delhi Transport Corporation***^[1]. He thus prayed to allow the appeal.

6a) Per contra, opposing the appeal, learned counsel for

respondent/APSRTC argued that Ex.A9—rough sketch clearly indicates that the deceased and his vehicle were on the right side of the road abutting the divider. Further, the evidence of RW3 and Ex.X1 would show that the right side of the bus was damaged. All these would indicate that the deceased came in the opposite direction and took a sudden right turn and dashed right side of the bus and thereby contributed to the accident and therefore, the Tribunal rightly fixed his liability at 50%.

b) He further argued that compensation fixed by the Tribunal under different heads is just and reasonable and there is no need to interfere with the same. He thus prayed to dismiss the appeal.

7) In the light of above rival arguments, the point for determination in this appeal is:

“Whether the award passed by the Tribunal is factually and legally correct or not?”

8a) **POINT:** Accident, involvement of bus bearing No.AP 28 Z 134 and scooty bearing No.AP 03 H 3361 and death of the deceased are admitted facts. The first contention of claimants is that the Tribunal erred in fixing 50% contributory negligence on the deceased. The case of the claimants is that on the night of 29.06.2007 at 9.10 PM the deceased and his brother who are residents of Reddy’s Colony started on their respective vehicles to go to Neerugattuvaripalle and they came to the main road leading from Madanapalle to Kadiri and took a left turn and when they were proceeding on the left side, the offending bus came

from back side, being driven by RW1 at high speed without blowing horn and dashed the scooty of the deceased and thereby the scooty fell towards right side of the road and broken into two parts and the bus dragged one part to an extent of 100 meters and the deceased received severe head injury and other injuries and died on the spot. Thus according to the claimants, RW1—the bus driver was solely responsible for the accident. Whereas the contention of respondent/RTC is that the bus was driven by RW1 and when it reached near Naik Hotel in Madanapalle town limits the deceased came on TVS scooty in the opposite direction and suddenly turned to the right side through the divider gap at high speed and hit the bus on the right side corner of the bumper, RW1 immediately turned the bus to the left side to avoid the accident, but TVS scooty hanged under the bumper as the deceased lost control over the scooty. The driver stopped the bus at the accident spot. Thus the respondent contended that the accident was occurred due to the fault of the deceased himself. The claimants examined PW2 as an eyewitness, whereas the respondent examined RW1—bus driver, RW2—a passenger in the bus and also RW3—MV Inspector.

b) Award shows, the Tribunal basing on Ex.A9—rough sketch depicting deceased and his vehicle were lying on the right side of the road abutting the divider and also finding the bus at a distance towards right side of the road, opined that there was every possibility of deceased coming in the opposite direction of

the bus and while coming out through divider gap hit the bus. The Tribunal however held it cannot be accepted that scooty was driven by deceased at high speed while crossing the divider gap so as to fix the entire rash and negligence on the deceased alone. With these observations, the Tribunal fixed liability equally on RW1 and deceased.

9) On a careful analysis of evidence on record, I am of the view that Tribunal erred in coming to the conclusion that deceased came in the opposite direction and took the right turn and hit the bus and thereby contributed to an extent of 50%. It must be said that the evidence on record does not give such a scope. It is the specific case of the claimants that on the date of accident the deceased, his brother and uncle have started from Reddy's Colony—II on their respective two wheelers to go to Neerugattuvaripalle on their personal work and after they reached the main road leading from Madanapalle to Kadiri and when they were proceeding to the left side, the bus came behind and hit the scooty of the deceased. This fact has been clearly mentioned in the OP pleadings as well as in Ex.A1—FIR which was lodged within short time after the accident. The factum of their proceeding from Reddy's Colony to go to Neerugattuvaripalle is not disputed by the respondent. It was elicited in the cross-examination of PW1 that in order to go to Neerugattuvaripalle from their house they have to take left turn on the main road.

10) Then, as per Ex.A9—rough sketch, Madanapalle—Kadiri

road runs in North South direction and Reddy's Colony—It is shown towards West of the road. Going by the evidence of PW1, the deceased, his brother and uncle must have come on their vehicles from Reddy's Colony and reached Madanapalle—Kadiri road and turned towards their left to proceed towards Neerugattuvaripalle. Since the offending bus was proceeding from Madanapalle to Hyderabad, it must have gone behind two wheelers of deceased and his brother. In that view, the contention of the respondent/RTC that the deceased came on his scooter in the opposite direction and took a right turn in the divider gap appears to be palpably false as there is no occasion for the deceased to come in the opposite direction in the light of oral and documentary evidence. Therefore, the contention of claimants that when the deceased was proceeding on the left side of Madanapalle—Kadiri road, the bus came behind him and dashed his vehicle can be accepted to be true. This fact was spoken by PW2, an independent witness. He deposed that when he reached Geetha Ice factory on Madanapalle—Kadiri road, he saw the deceased proceeding towards Neerugattuvaripalle on his scooter on the left side of the road and the Volvo bus proceeding behind him being driven by its driver at high speed and in a rash and negligent manner without blowing horn and hit the vehicle of the deceased and due to impact of the hit the deceased fell on the road and his vehicle fell on the right side of the bus and part of the vehicle was dragged nearly 100 meters from the spot. He avouched that bus driver was responsible for

the accident. He was thoroughly cross-examined but nothing useful could be extracted. So, the evidence of PW2 is not only in consonance with Ex.A9—rough sketch and the evidence of PW1 but also depicts that the bus went behind the scooty and dashed it.

11a) Per contra, the evidence of RWs.1 to 3 is of no use to establish the stand of the respondent. RW1 is the bus driver and he is an interested witness. His claim that deceased came in the opposite direction and suddenly took right turn through divider gap and dashed the right side bumper of the bus is held to be palpably false in view of the observation made supra.

b) Coming to RW2, he is said to be one of the passengers in the bus. However, admittedly he was sitting in the Seat No.40 and from his seat the traffic is not visible. The Tribunal rightly discarded his evidence.

c) RW3—MV Inspector is concerned, he only stated that he inspected the bus and noticed that right side portion of the bus was damaged. Merely because the right side of the bus was damaged, no inference can be drawn that the deceased came in the opposite direction and took right side turn and dashed on the right side of the bus. The impossibility of deceased coming in the opposite direction was already discussed supra. RW3 admitted that when a vehicle proceeding on the left side of the road and received a hit from backside, the possibility of its falling towards right side cannot be ruled out. In view of this admission which is

mostly based on common sense, there cannot be any automatic conclusion from the rough sketch showing the deceased and his vehicle falling on the right side that the deceased came in the opposite direction and took a right side turn and hit on the right side bumper of the bus. So, at the outset, the evidence of RW3 will not prove the stand of respondent.

12) So, on an analysis of evidence on record, I am unable to countenance the finding of the Tribunal that the deceased came in the opposite direction and took right side turn and dashed the right side bumper of the bus. On the other hand, the record shows that deceased after coming from Western side of Reddy's Colony—He took left turn on to the Madanapalle—Kadiri road and the offending bus went behind him and dashed him. So, primarily the bus driver was responsible for the accident.

13) Coming to contributory negligence, if any, on the part of deceased, while coming on to the main road and taking turn to his left side it appears that deceased was not vigilant in observing the bus coming behind him. Had he shown some vigilance and diligence, he would have stopped his vehicle at the point of turn allowing the bus to go. In that process, in my considered view, the deceased too contributed for the accident but however, his contribution was relatively lesser than RW1. Hence, while fixing the responsibility of RW1 at 65% the contributory negligence of the deceased can be fixed at 35%.

14a) Quantum of compensation is concerned, it requires re-

assessment in my view. As seen from Ex.A5, the deceased was working as Typist in Principal Junior Civil Judge's Court, Punganur and drawing salary of Rs.12,686/- per month. The Tribunal, no doubt, accepted the said amount in computation of compensation for loss of dependency. However, it did not take into account his future prospects. In **Sarla Verma's** case (1 supra) the Apex Court laid down that addition should be made to an extent of 30% if the deceased was aged between 40 to 50 years. The deceased in this case was aged about 45 years. So, 30% is to be added to his salary towards future prospects which comes to Rs.16,491/- (Rs.12,686/- + Rs.3,805/-) and rounded off to Rs.16,490/-. The annual income of the deceased which will serve the purpose as multiplicand comes to Rs.1,97,880/- (Rs.16,490/- x 12). Since the dependants are four in number, $\frac{1}{4}^{\text{th}}$ is to be deducted towards personal expenses of the deceased following the dictum laid down in **Sarla Verma's** case (1 supra) and the net contribution of the deceased to his family comes to Rs.1,48,410/- (Rs.1,97,880/- x $\frac{3}{4}$). The Tribunal rightly selected '13' as multiplier. So, the loss of dependency comes to Rs.19,29,330/- (Rs.1,48,410/- x 13).

b) Then, following the decision in **Rajesh v. Rajbir Singh**^[2] a sum of Rs.25,000/- is awarded towards compensation for funeral expenses. Going by the fact that the first claimant lost her husband in her middle age, a sum of Rs.25,000/- is awarded for loss of consortium. Thus, the total compensation payable to the claimants under different heads is detailed as below:

Loss of dependency	Rs. 19,29,330-00
Loss of consortium	Rs. 25,000-00
Funeral expenses	Rs. 25,000-00

Total	Rs. 19,79,330-00

c) Since the deceased contributed to the accident to an extent of 35%, the above compensation is reduced to 65% which comes to Rs.**12,86,564/-** (Rs.19,79,330 x 65%). Thus, the net compensation payable to the claimants is Rs.**12,86,564/-**

At the out set, the compensation is enhanced by Rs. **6,14,364/-** (Rs.12,86,564/- minus Rs.6,72,200/-).

15) In the result, this MACMA is partly allowed and ordered as follows:

- a) The compensation is enhanced by **Rs.6,14,364/-** with proportionate costs and interest at the rate of 7.5% per annum from the date of OP till the date of realization.
- b) Respondent in the OP is directed to deposit the compensation amount within two (2) months from the date of this judgment, failing which execution can be taken out against it.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 27.04.2016

Murthy

[\[1\]](#) 2009 ACJ 1298 (SC)

[\[2\]](#) 2013 ACJ 1403 (SC)