

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.219 OF 2009

JUDGMENT:

The petitioners, having got aggrieved over the order and decree dated 18.07.2006, in O.P. No.1037 of 2006, on the file of the Chairman, Motor Accident Claims Tribunal - cum - VII Additional Metropolitan Sessions Judge - cum - XXI Additional Chief Judge, Hyderabad (for short 'the Tribunal'), whereby and where-under, a compensation of Rs.35,000/- was granted as against the claim of 5,00,000/- laid by the petitioners under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), preferred the instant appeal under Section 173 of the Act seeking enhancement.

2. The appellants herein are the petitioners, while respondent No.1 - the Chairman and Managing Director, A.P. Tourism, Hyderabad, owner of bus bearing registration No.AP 09Y 2758 and its insurer - respondent No.2 - M/s. New India Assurance Company Limited, are respondent Nos.1 and 2, and respondent No.3 is arrayed as such, in the O.P. before the Tribunal.

3. For the sake of convenience, the parties herein are referred to as they were arrayed in the O.P.

4. The basic facts are that on 01.04.2006 at about 11.00 a.m., one Puspaka Malleshram, whose mother and younger

brother are the petitioners and father, being the 3rd respondent has divorced the 1st petitioner and again contracted second marriage, was returning his home on foot from Budhera village to Konkal village, and when he reached the outskirts of Konkal village, a tourist bus bearing registration No.AP 09Y 2758 belonging to respondent No.1 insured with respondent No.2 driven by its driver in a rash and negligent manner at high speed came from behind and hit him and ran over him, due to which, he died instantly.

5. The petitioners claiming that the deceased was working as Electrician, earning Rs.4,000/- per month and they were dependants on him, sought a compensation of Rs.5,00,000/-.

6. Respondent No.1, owner of the vehicle, remained *ex parte*.

7. Respondent No.2 - insurer opposed the claim and also filed additional counter stating that respondent No.3 filed O.P. in Ranga Reddy District, wherein the petitioners were made as respondents and suppressing the said fact, the petitioners filed the claim petition under and, therefore, sought to dismiss the claim petition.

8. The Tribunal basing on the pleadings, framed the following issues:

“ 1) whether the accident occurred due to rash and negligent driving of the vehicle bearing No.AP – 09- Y 2758 Volva bus belonging to AP Tourism by its driver?

2) Whether the petitioners are entitled for compensation?
If so to what amount and from whom?

3) To what relief? ”

9. During inquiry, petitioner No.1 examined herself as PW.1 and marked Exs.A-1 to A-9. On behalf of respondent No.2, copy of insurance policy was marked as Ex.B-1.

10. Heard Sri Sudheer Lingala, learned counsel for the petitioners, and Sri B. Narayana Reddy, learned Standing Counsel for the 2nd respondent – insurer. There is an endorsement made in the cause title partition in the grounds of appeal that the 1st respondent is not a necessary party. In fact, the 1st respondent suffered decree, though, compensation awarded was Rs.35,000/- only.

11. On issue No.1, the Tribunal held that due to rash and negligent driving of the bus driver, the accident has taken place. On issue No.2, rejected the stand of the petitioners that the deceased was earning Rs.4,000/- per month as Electrician, on the ground that no evidence is placed to prove that the deceased was an earning member. The Tribunal, by considering the contents of Ex.A-9, Xerox copy of family members details, while holding that the net income of the petitioner No.1 is shown as Rs.48,000/- per annum, recorded a finding that the petitioners or respondent No.3 cannot be construed as dependants on the income of the deceased. Therefore, towards loss of estate, a sum of Rs.15,000/-,

towards love and affection a sum of Rs.15,000/- and towards funeral expenses a sum of Rs.5,000/- were awarded by the Tribunal as against the claim of Rs.5,00,000/- laid by the petitioners.

12. It is really unfortunate that the Tribunal has not referred to Ex.A-5, certified copy of order in O.P. No.1107 of 2006 filed by respondent No.3, father of the deceased. Further, there is no mention, at all, as to whether the said claim petition was dismissed or whether any amount was awarded towards compensation. It is really strange and understandable that the Tribunal disposed of the present claim petition in a slipshod manner without due application of mind referring to the purport of each document, at least Ex.A-5, which gains prominence in the context of whether or not the petitioners are entitled to any amount and whether there was any mischief being played by the petitioners or by respondent No.3 in filing O.P. No.1107 of 2006 and projecting the same.

13. A perusal of Ex.A.5 – Certified copy of order in O.P.No.1107 of 2006 would show that the said claim petition was filed by the 3rd respondent herein on the premise that he was the husband of the 1st petitioner, without discussing whether the marital tie between them was subsisting or not, though, a stand has been taken in the instant claim petition by the wife, who is the 1st petitioner, seeking compensation

and the said claim petition was dismissed as not pressed, which fact, in fact, ought to have find place in the order and decree challenged herein.

14. Now, turning to the question, whether the petitioners are entitled for enhancement of compensation or whether the order and decree passed by the Tribunal can be sustained, admittedly, the 1st petitioner is shown as a Government Servant by the petitioners themselves. In fact, the 3rd respondent is also shown as a Government Servant. It is reported that the 3rd respondent is no more, however, his absence makes no difference, since, if, at all, his legal representatives are to be brought on record, the petitioners alone can be brought on record and nobody else.

15. The Tribunal has granted a compensation of Rs.35,000/-, without actually applying any structural formula. It is no doubt true that the Tribunal took the view that the 1st petitioner and the 3rd respondent cannot be considered as dependents on the deceased, including the 2nd petitioner, who is the younger brother of the deceased. But, certainly, the matter cannot end there, for the reason that, it is not only the dependency that is to be kept in view, while awarding compensation, but also the grief, which the mother and younger brother of the deceased would have to feel through out the rest of their life. Even the law declared by the

Hon'ble Supreme Court is also to the same effect. (please refer case law)

16. Now, turning to the age, occupation and income of the deceased, the Post Mortem Report would show the age of the deceased as 28 years as on the date of accident. Though, it is projected that the deceased was earning Rs.4,000/- per month, no legal evidence is available to prove the income as well as earnings of the deceased. In such an event, the notional income of the deceased can be taken as Rs.3,000/- per month. Since the deceased died in an unmarried status, 50% thereof is permissible towards personal living expenses of the deceased and, in which case, his contribution to the family can be considered as Rs.1,500/- per month or Rs.18,000/- per annum, for which the relevant multiplier is '17, as provided in the table formulated in **Sarla Verma & others v. Delhi Transport Corporation and another**¹ and when the same is applied, the loss of contribution works out to Rs.3,06,000/- ($\text{Rs.18,000/-} \times 17 = \text{Rs.3,06,000/-}$). This would be the amount, to which the petitioners are entitled to, besides the conventional sums of Rs.15,000/- towards loss of estate, and Rs.5,000/- towards funeral expenses, awarded by the Tribunal. The other amount of Rs.15,000/- granted by the Tribunal towards love and affection merges into the amount now determined towards contribution. Thus, the petitioners

¹ (2009) 6 Supreme Court Cases 121

are totally entitled to a compensation of Rs.3,26,000/-. Further, the Tribunal has awarded interest @ 6% per annum. However, as per the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**², the petitioners are entitled for interest @ 7.5% per annum.

17. Accordingly, the Civil Miscellaneous Appeal is allowed in part, enhancing the amount of compensation from Rs.35,000/- to Rs.3,26,000/- (Rupees three lakhs twenty six thousand only) along with interest @ 7.5% per annum on the total amount of compensation, from the date of petition till the date of realisation, and the same shall be apportioned between respondent Nos.1 and 2 in the same proportion as directed by the Tribunal. No order as to costs.

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

JUSTICE A. SHANKAR NARAYANA

15.09.2016.
Msr

² 2013 ACJ 1403

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