

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A.C.M.A. No.1007 OF 2005

JUDGMENT:

The Instant appeal is preferred by the erstwhile Andhra Pradesh State Road Transport Corporation (APSRTC), which figured as sole respondent in M.V.O.P. No.304 of 2000, aggrieved by the order and decree, dated 30-11-2004, passed by the learned Chairman, Motor Accidents Claims Tribunal – cum – IV Additional District Judge, Tirupati (for short 'the Tribunal'), whereby and where-under a sum of Rs.3,83,500/- was awarded as compensation with interest at 9% per annum thereon as against the claim of Rs.6,00,000/- made by petitioner under Section 166-1 (c) of the Motor Vehicles Act, 1988 (for short 'the Act') for the death of son of the petitioner, seeking to set aside the same on the ground that the amount awarded by the Tribunal was excessive and arbitrary.

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 27-02-2000, one P. Chandrasekhar, son of the petitioner, was travelling in an auto-rickshaw and when it reached near Kammollapalle on Bhakarapet to Chinnagottigallu road at about 11.30 p.m., an RTC bus bearing registration No.AP 9Z 7806 driven by its driver in a rash and negligent manner came in opposite direction and hit the auto-

rickshaw, due to which, it turned upside down resulting in severing of his right hand. He was immediately shifted to S.V.R.R.G.G. Hospital, Tirupati for treatment, but on the way, he succumbed to injuries.

i) The Station House Officer, Bhakarapet Police Station registered a case in Crime No.11 of 2000 under Sections 337 and 304-A IPC against the driver of the bus.

ii) The petitioner, who is the mother of the deceased, claiming that her husband's whereabouts were not known as he left the family long back; that the deceased was 20 years old on the date of accident and mason by profession, earning Rs.120/- per day; and that she lost her monetary help at her old age, sought Rs.6,00,000/- as compensation.

5. Respondent – Corporation filed counter resisting the claim, attributing negligent driving to the driver of the auto-rickshaw, and though, the driver of the bus took the bus to his extreme left side and stopped it, still, the driver of the auto-rickshaw as he was unable to control the speed and hit the bus that occasioned the accident. That has been the main contention. Yet another plea was taken that non-joinder of owner and insurer of the auto-rickshaw makes the claim bad and thereby sought to dismiss the claim petition.

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

7. During inquiry, the petitioner besides examining herself as PW.1 has examined an eye-witness as PW.2 and marked

Exs.A-1 to A-6 in order to substantiate her claim. On behalf of respondent, its driver was examined as RW.1 and marked Ex.B-1.

8. The Tribunal, on issue No.1, having considered the evidence of RW.1, driver of the bus, and the evidence of PW.2 and the documentary evidence, recorded a finding that due to rash and negligent driving of the driver of the bus, the accident had occurred. On issue No.2, the Tribunal has taken the income of the deceased as Rs.100/- per day or Rs.3,000/- per month as against Rs.120/- per day claimed by the petitioner. Basing on the age of mother of the deceased, who is petitioner herein, as 42-43 years on the date of accident in view of the admission made by her and basing on the multiplier provided in the Second Schedule to Section 163-A of the Act, taken the relevant multiplier as '15', and applying the same with the income of the deceased arrived at Rs.5,40,000/- and then deducting 1/3rd there-from towards expenses of the deceased, arrived at Rs.3,60,000/- towards loss of dependency. The Tribunal has also granted other sums, i.e., Rs.500/- towards transport charges; Rs.500/- towards damage to the clothes, Rs.2,500/- towards funeral expenses, Rs.10,000/- towards pain and suffering, Rs.10,000/- towards loss of expectation of life and, thus, granted a total compensation of Rs.3,83,500/- with interest at 9% per annum thereon.

9. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal, somehow, overlooked the fact that the driver of the auto-rickshaw contributed to the accident. It is also stated that the Tribunal ought not to have taken the income of the deceased at Rs.36,000/- per annum without there-being any proof, and even multiplier

applied was incorrect and, therefore, sought to set aside the order and decree.

10. Heard Sri A. Rama Rao, learned Standing Counsel for the appellant – APSRTC. No representation for the respondent.

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

12. So far as contributory negligence is concerned, that stand taken by the Corporation would not sustain in view of the fact that the Corporation has not taken any pains to exhibit rough sketch of scene of occurrence and map drawn by the concerned Investigating Officer in arriving at the conclusion that whether there was any fault on the part of the driver of the auto-rickshaw even. Therefore, the same cannot be accepted and the finding recorded by the Tribunal on issue No.1 is confirmed.

13. Concerning determination of compensation, the Tribunal went wrong in deducting 1/3rd. In fact, the deceased died in an unmarried status and, therefore, 50% of the income ought to be deducted towards his personal expenses and, in such an event, the same would work out to Rs.1500/- per month or Rs.18,000/- per annum. The relevant multiplier as per the decision of the Hon'ble Apex Court in **Sarla Verma & others v. Delhi Transport Corporation and another**^[1] is '14' and when the multiplier '14' is applied, the loss of dependency works out to Rs.2,52,000/- [Rs.18,000/- x 14]. The other amounts awarded by the Tribunal do not warrant any interference. Thus, the compensation amount is reduced to Rs.2,75,500/- from Rs.3,83,500/-.

14. Concerning rate of interest, the Tribunal awarded the same at 9% per annum, but the same has to be reduced to 7.5% per annum in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[2].

15. In the result, the appeal is allowed in part, and order and decree, dated 30-11-2004, in M.V.O.P. No.304 of 2000, passed by the Tribunal, are modified, reducing the compensation to Rs.2,75,500/- (Rupees two lakhs seventy five thousand and five hundred) from Rs.3,83,500/- (Rupees three lakhs eighty three thousand and five hundred) with interest at the rate of 7.5% per annum thereon from the date of petition till realization. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

February 10, 2016.

Mgr

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

^[2]. 2013 ACJ 1403