THE HON'BLE MR JUSTICE N.BALAYOGI

MACMA NO.347 OF 2008
And
MACMA NO.360 OF 2008

COMMON JUDGMENT:

M.A.C.M.A.No.347 of 2008 is filed by the APSRTC and M.A.C.M.A.No.360 of 2008 is filed by the claimants, against the Award and decree dated 23.08.2007 passed by the Motor Vehicle Accidents Claims Tribunal-cum-VIII Additional District Judge, Nizamabad in O.P.No.1728 of 2001.

2. The parties hereinafter are referred to as arrayed before the Tribunal.

3. The deceased-Landeri Kishan was the husband of the 1st petitioner, father of petitioners 2 and 3 and son of the 4th petitioner and he was working as school teacher by drawing salary of Rs.5,200/- besides earning Rs.24,000/- per annum by doing cultivation and Rs.1,000/- per month towards undertaking tuitions as on the date of his death in the accident. On 20.11.2000 at 09.15 A.M. the deceased along with another person by name Jangaiah as pillion rider, while going on Scooter bearing No. AP 25 F 1473 to attend school in Machapur Village, an APSRTC bus bearing No. AP 10Z 7648 came in opposite direction, on wrong side of the road, in a rash and negligent manner and dashed the scooter, as a result of which, the deceased and pillion rider fell down, and

the deceased received grievous injuries and shifted to Government Hospital, Korutla and thereafter when he was being shifted to Nizam Institute of Medical Sciences, Hyderabad, he died on the way. In the claim petition filed by his legal representatives, they claimed compensation of Rs.15 lakhs.

4. The Tribunal after making an enquiry into the claim, awarded compensation of Rs.6,93,000/- with interest @ 7.5% per annum from the date of petition till the date of realization and fastened the liability on the APSRTC.

5. The claimants instituted the appeal on various grounds mainly on the grounds that the Tribunal should have considered the evidence of PW.2, documentary evidence of Exs.A1, A2 and A11 and should have granted full compensation. The Tribunal also should have considered the evidence of PWs1 and 4 that the deceased was undertaking tuitions and was earning Rs.12,000/- per annum, and should have assessed the monthly income on tuitions at Rs.1,000/- per month instead of Rs.3,000/- per annum. Further the Tribunal ought to have seen that the deceased was having agricultural land of Ac.02.01 guntas and cultivating the same as shown in Ex.A.5 and should have accepted the probable income on cultivation at Rs.24,000/- per annum instead of Rs.12,500/- per annum.

6. Further the Tribunal should have considered the salary, income on tuitions and agriculture and have applied suitable multiplier and awarded the compensation as claimed.

7. The contention of APSRTC is that Exs.A1-certified copy of FIR and A2-certified copy of inquest report are not relevant and the Tribunal ought not to have relied upon them. Further that PW.2 is not an eye witness to the accident, the claimants failed to establish rash and negligent driving of the driver of RTC bus and Ex.A.3 salary certificate is not proved as contemplated under law. The amount of compensation awarded is on higher side and not in accordance with the provisions of Motor Vehicles Act.

8. Before the Tribunal, on behalf of the claimants, PWs.1 to 4 were examined and marked Exs.A1 to A.14. None were examined and no documents were marked on behalf of the respondents.

9. The 1st petitioner, who is no other than the wife of the deceased L.Kishan was examined as PW.1, who admittedly not an eye witness to the accident. Therefore, necessarily the Tribunal relied on the evidence of PW.2-Jangaiah, who was the pillion rider and eye witness to the accident. The evidence of PW.1 is that her husband possessed valid and effective driving license at the time of accident. To substantiate the

same claimants filed Ex.A.6-xerox copy of the driving license bearing No.2139 of 1998 issued on 22.09.1998, which reveal that the deceased is having license to drive motor cycle with gear. At the time of accident, the deceased L.Kishan was driving scooter bearing No.AP 25 F1473 to which he was authorised to drive.

101. Accordingly, the evidence of PW.1 supported by Ex.A.6-driving license establish that the deceased was having valid and affective driving license to ride the scooter at the time of accident. Hence, the finding of the Tribunal that the deceased L.Kishan was having valid driving license at the time of riding the scooter is legal, valid and can be sustained.

11. With regard to the negligence, there is evidence of PW.2 and documentary evidence i.e. Ex.A.1-FIR, Ex.A.2-inquest report, Ex.A.9-C.C. of final report, and Ex.A.10-c.c. of M.V.I Report. The evidence of PW.2 is consistent through out that at the time of accident the deceased was riding the scooter bearing No. AP 25 F 1473 with care and cautious manner. In the meanwhile, the driver of the RTC bus drove, in a rash and negligent manner came in opposite direction and dashed the scooter of which PW.2 is a pillion rider and the deceased was rider of the scooter. There was a specific assertion in Ex.A.1-FIR that the driver of the RTC bus drove in rash and negligent

manner and dashed one burkha clad lady and later dashed the scooter.

12. The Investigating Officer in Ex.A.9-Final Report specifically mentioned that the driver of the RTC bus drove it in rash and negligent manner with high speed and dashed against one muslim lady while she was crossing the road and also dashed the scooter. At the time of accident, RTC bus came to the extreme right side of the road i.e. wrong side of the road.

13. In the written statement, the respondents pleaded that the driver of the bus noticed that old burka clad muslim lady on the left side of the road and sounded horn by slowing down the bus. But the said old lady did not care for the same and tried to cross the road. Therefore, the driver of RTC bus applied sudden brakes and took the bus to the right side of the road in order to avoid dashing against the old lady. But in the meanwhile, the old lady came into contact with the front left side of the bus and fell down on the road. Meanwhile, the bus driver noticed that one scooterist was coming from opposite direction in high speed and on seeing that the bus driver sounded horn repeatedly to caution the scooterist. But the scootarist did not slow down the speed and in the said speed came and dashed against the front side of the bus.

14. From the pleadings itself it is very clear that at the time of accident, the driver of the bus went to the extreme right side of the road, i.e. on wrong side first dashed a old lady, who is crossing the road. According to PW.2, the said lady already crossed middle of the road and the bus dashed her, who died on the spot and later dashed the scooter ridden by the deceased.

15. The Motor Vehicle Inspector, who inspected the vehicle issued Ex.A.10-report and opined that the accident was not due to any mechanical defects of the vehicle. The respondent having taken the plea that the driver of the bus noticing the muslim lady crossing the road went to the right side to avoid dashing her and hit the scooter ridden by the deceased at the time of accident, but did not chose to produce any oral or documentary evidence.

16. It is not the case of the respondent that the driver and conductor of the bus, who are under his control, were not available for examination. In the absence of any such rebuttal evidence, the Tribunal having considered the oral evidence of PW.1 and PW.2 and documentary evidence under Exs.A.1, A2, A9 and A10 came to the right conclusion that there is no negligence on the part of the rider of the scooter i.e. the deceased – L.Kishan and that the driver of the bus,

who drove the vehicle with high speed in rash and negligent manner and caused accident by entering into the wrong side. The said finding is legal, valid and do not suffer from any legal infirmities warranting interference.

17. As per Ex.A.4-post-mortem report and Ex.A.2-inquest report, where under the inquestors opined that the deceased L.Kishan succumbed to injuries while undergoing treatment due to the injuries sustained in the accident on 20.11.2000 at 09.15. The doctor also opined in Ex.A.4 that the deceased died due to shock and hemorrhage as a result of head injury. Accordingly, there is nexus between the accident and the death of the deceased L.Kishan.

18. With regard to the income of the deceased, the claimants filed Ex.A.3 salary certificate of the deceased, Ex.A.5 patta pass book and Ex.A12 copy of Pahani. The evidence of PW.1 shows that her husband did B.Sc.B.Ed., and later did M.Sc. Mathematics, and was working as Government Teacher and his monthly salary was Rs.5,200/- and her husband aged about 33 years as on the date of accident. PW.1 also stated that besides teaching, he also used to earn Rs.12,000/- per annum by conducting tuitions. PW.2 corroborated the evidence of PW.1 that the deceased was working as primary school teacher and earning Rs.5,210/-

per month, besides that he used to cultivate land and earn Rs.24,000/- per annum. Further PW.2 deposed that the deceased used to undertake tuitions for the students of 7th class and 10th class and earn Rs.12,000/- per annum. Simultaneously, PW.4 corroborated the evidence of PWs.1 and 2 that the deceased used to teach mathematics as a teacher in primary school at Banda Machalpur Village for the students of 10th class. His grand son Rajesh Katam take tuition in the year 1999 and he used to pay remuneration of Rs.200/- per month to the deceased.

19. There is no rebuttal evidence adduced by the respondents to the evidence of PWs.1, 2 and 4. Therefore, their evidence remains unchallenged. Ex.A.3 is the last pay certificate issued by the Primary School, HMCOU, according to which, the gross salary of the deceased was Rs.5,210/-. The deductions are only Rs.50/-. To prove Ex.A.3-salary certificate contents, PWs.2 and .4, who are similarly situated teachers were examined to corroborate the evidence of PW.1. Therefore, there is no substance in the contention of the insurance company that Ex.A.3-salary Certificate is not proved as contemplated under law.

20. The Tribunal having came to the conclusion that Ex.A.3-salary certificate is genuine and considered the evidence of PWs.1, 2 and 4 that the monthly salary of the

deceased was Rs.5,210/-, the deceased was earning Rs.3,000/- per annum towards tuitions because PW.4 clearly admitted that he used to pay Rs.200/- per month to the deceased towards tuition fee of his grand son. The finding of the Tribunal that the deceased was]earning Rs.3000/- per month on account of teaching tuitions is legal and do not warrant any interference.

21. The evidence of PW.1 is that her husband used to cultivate lands by possessing agricultural land to an extent of Ac.2.01 guntas in Yeknipoor Village and 0.20 guntas in Korutla. PW.3, who is adjacent owner also spoken that after the death of L.Kishan, the said land was remained fallow and that he was earning Rs.35,000/- per annum.

22. Ex.A.5 is the Xerox copy of the patta passbook which shows that the deceased possessed AC.2.01 guntas of land and that the another passbook shows that the 2nd petitioner possessed Ac.3.00 of dry land in Takellapalli Village, which also shows the name of the 3rd petitioner in the same village. Petitioners 2 and 3 being minors, the deceased used to cultivate their lands. Ex.A.12 – pahani stands in the name of the deceased that he possessed 0.20 guntas of land. Therefore, the evidence of PWs.1, 2 and 4 is corroborated and supported by Exs.A.5 and A.12, which well established that the deceased used to cultivate land. But there is no specific

evidence about the nature of crops raised and the income derived from the said land. The Tribunal considered that the lands covered under Ex.A.5 and A.12 are dry lands. Since the deceased was a teacher he could not cultivate the lands personally and may cultivated them through others and his annual income from the cultivation could be Rs.12,500/- per annum.

23. The deceased was working as Government School Teacher and was getting salary of Rs.5,210/- per month, by way of tuitions Rs.3,000/- per annum and Rs.12,500/- per annum towards cultivation. Thus, his annual income comes to Rs.5,210/- x 12 + Rs.3,000/- + Rs.12,500/- = Rs.78,020/- rounded to Rs.78,000/- per annum. Since the age of the deceased was below 40 years and working as Government Teacher and having bright future, 50% of his income has to be added towards future prospects. i.e. Rs.78,000/- x 50/100 = Rs.39,000/-. Since the dependants are four in number, 1/4th has to be deducted towards personal and living expenses of the deceased, which comes to (Rs.78,000/- plus Rs.39,000/-) Rs.1,17,000/- x ¼ = Rs. 29,250/-. Therefore, the loss of dependency would comes at Rs.1,17,000/- minus Rs.29,250/- = Rs.87,750/-. As per **SARALA VARMA AND OTHERS v DELHI TRANSPORT CORPORATION AND**

ANOTHER[1], the relevant multiplier to the age of the deceased is '16'. To arrive at the loss of earnings, if multiplied with '16', it comes to Rs. Rs.87,750/- x 16 = Rs. 14,04,000/-. This apart, the first claimant, who is the wife of the deceased is entitled for an amount of Rs.40,000/- towards loss of consortium. Further the claimants are entitled for Rs.10,000/- towards funeral expenses and Rs.10,000/- towards loss of estate. A sum of Rs.36,000/- was awarded to the claimants 1 and 2, who are minors and who lost love and affection of their father. In all, the claimants are entitled for compensation of Rs.14,04,000/- + Rs.40,000/- + Rs. 10,000/- + Rs.10,000/- + Rs. 36,000/- = Rs.15,00,000/-.

24. In the result, MACMA No.347 of 2008 filed by the APSRTC is dismissed. No costs.

25. In the result, MACMA No.360 of 2008 filed by the claimants is allowed modifying the award dated 23.08.2007 in O.P.No.1728 of 2001 on the file of the Learned Chairman, Motor Accident Claims Tribunal-cum-VIII Additional District Judge modified to the extent indicated above and awarded Rs.15,00,000/- with costs.

25. Consequently, APSRTC being the owner of the offending vehicle is liable to pay the compensation amount of Rs.15,00,000/- to the claimants, after deducting the amount

[1] 2009 ACJ 1298

if any, already paid or deposited, with bank interest at 7.5% per annum from the date of petition i.e. 22.10.2001 till the date of deposit, which shall be deposited within a period of 30 days from the date of receipt of a copy of this award. The 4th claimant died and the claimants stated that they are already on record as legal representatives of the 4th claimant.

26. Out of the said total compensation, Rs.7,00,000/-is apportioned to the 1st claimant, who is wife of the deceased. The 1st claimant is permitted to withdraw an amount of Rs.3,00,000/- and the balance amount shall be kept in any nationalized bank.

27. Claimants 2 and 3 being the minors are entitled to receive compensation of Rs.4,00,000/- each, their share shall be kept in fixed deposit of any nationalized bank till they attain majority and the interest accrued thereon shall be withdrawn for their educational and other expenses.

28. The Advocate fee is fixed at Rs.2,000/-.

Miscellaneous petitions if any pending in this appeal shall stands dismissed.

Date: 07.07.2017 **N.BALAYOGI, J**

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