HON'BLE SRI JUSTICE M.S.K.JAISWAL

M.A.C.M.A.No.1159 of 2010

JUDGMENT:

The appellants are the claim petitioners in M.V.O.P.No.243/2009 on the file of the learned Chairman, Motor Accidents Claims Tribunal-cum-Family-cum-Additional District Judge, East Godavari at Rajahmundry (for short "the Tribunal"). They filed the claim petition claiming compensation of Rs.3,00,000/- for the death of their father Vanumu Narayudu in a motor vehicle accident, which is said to have taken place on 24.02.2009, involving the RTC Bus bearing registration No.AP-5W-4784, which was being driven by the 1st respondent, owned by the 2nd respondent, insured by the 3rd respondent and hired by the 4th respondent. The Tribunal, vide judgment dated 27.04.2010, holding that the petitioners are major sons of the deceased and they are entitled to only loss of estate and accordingly awarded only a sum of Rs.20,000/-. Aggrieved by the same, the petitioners filed the present appeal.

The facts in brief are that on 24.02.2009 at about 8.15 a.m, when the deceased was standing near the Nandarada road centre to catch the bus, then the offending bus came from Korukonda side in a rash and negligent manner and dashed the deceased and ran over the deceased, due to which, the deceased died on the spot. The deceased was aged about 55 years, he was hale and healthy by the time of accident, and he was earning Rs.150/- per day by attending coolie works.

Respondents Nos.3 and 4 filed counters denying their liability stating that since the bus was under hire to the RTC, the owner of the bus and RTC are liable to pay compensation.

On behalf of the claimants, P.Ws.1 and 2 were examined and got marked Exs.A.1 to A.5. On behalf of the respondents, no oral evidence was adduced, but marked Exs.B1 and B2.

The learned counsel for the appellants submits that the Tribunal has erred in holding that the claimants being the major sons of the deceased married and living independently cannot claim any compensation for the loss of earnings and also erred in awarding only a sum of Rs.20,000/- for the death of their father, who is aged about 55 years. The learned counsel further submits that the fact that the deceased died in a motor vehicle accident involving the RTC bus is not disputed and therefore, the Tribunal ought to have awarded the compensation as claimed and hence the appeal.

On behalf of the 4th respondent/RTC, it is submitted that the accident did not take place due to any negligence on the part of the driver of the RTC bus, but due to the acts of the deceased himself who in anxiety crossed the road to catch the offending bus, fell down himself and sustained injuries. It is further submitted that the Tribunal has taken into consideration the relevant facts and awarded Rs.20,000/- which do not warrant any interference.

Heard both sides and perused the material on record.

The fact that the deceased Vanumu Narayudu died in a motor vehicle accident on 24.02.2009 at 8.15 a.m, having run over by the RTC bus as alleged is not disputed. Similarly, the finding of the Tribunal that the accident was due to rashness and negligence on the part of the driver of the RTC bus is also not challenged. Therefore, the only point that arises for consideration is as to whether the claimants are entitled to compensation as claimed or whether the amount awarded by the Tribunal is just and reasonable.

The Tribunal erred in holding that the claimants being the major sons cannot be treated as dependents of the deceased. There are catena of authorities to the effect that merely because the sons are majors or earning members that cannot be a ground in holding that they are disentitled to claim compensation. The Full Bench of our High Court in *Dr.Gangaraju Sowmini v. Alavala Sudhakar Reddy*[1] after referring to several authorities, has laid down that a non-dependant heir of the deceased, who died in a motor accident is entitled to lay claim for compensation under Section 166 of the Motor Vehicles Act, 1988, where there is no other dependent legal heir to claim compensation. In view of the authoritative pronouncement of the Full Bench of our High Court in the above decision, the observations of the Tribunal that the claim of the appellants for compensation is not maintainable on the ground that they are major sons and not depending upon the deceased cannot be sustained.

With regard to the quantum of compensation, as noticed above, the Tribunal has awarded only a sum of Rs.20,000/- towards loss of estate. According to the appellants, the deceased father was earning Rs.150/- per day and was contributing to the family. The age of the deceased has been taken by the Tribunal as 56 years based upon the contents of the First Information Report, the Inquest report and the postmortem certificate. The Tribunal has also took into consideration the fact that no evidence has been produced to show the income of the deceased and therefore, took the notional income of the deceased at Rs.3,000/- per month. This approach by the Tribunal in any way cannot be said to be erroneous.

If the same income is taken into consideration, the loss of earnings to the claimants is worked out as under:

[1] 2016 (2) ALD 226 (FB)

Rs.3,000/- x 12 = Rs.36,000/- per annum

After deducting 1/3rd therefrom towards personal expenses, works out at Rs.24,000/-

Loss of earnings: Rs.24,000/- x 9 = Rs.2,16,000/-

The Tribunal held that the claimants are entitled to Rs.20,000/- towards loss of estate. In addition to the above, the claimants are entitled to a sum of Rs.7,000/- each towards funeral expenses and transportation charges. In all, the claimants are entitled to Rs.2,50,000/- towards compensation .

With regard to liability, as already stated, the offending bus was hired by the RTC. The Supreme Court in *Managing Director, KSRTC v. New India Assurance Co.Ltd.*[2] held that in a similar case the registered owner, insurer as well as the Road Transport Corporation would be liable to pay compensation jointly and severally to the claimants, and the RTC in terms of the lease agreement entered into with the registered owner, can recover the compensation amount paid to the claimants from the owner as stipulated in the agreement or from the insurer.

Following the above authority, it is held that respondents Nos.2, 3 & 4 are jointly and severally held liable to pay the compensation and as held by the Supreme Court in the above decision, it is open to the RTC to recover the said amount from the 2nd respondent-owner and 3rd respondent-insurer in terms of the agreement.

In the result, the MACMA is allowed in part, enhancing the compensation from Rs.20,000/- to Rs.2,50,000/- to the claimants together with interest at 7.5% per annum from the date of petition till the date of realization, to which, the respondents 2 to 4 are jointly and severally liable to

[2] 2015 (6) ALD 166 (SC)

pay the same with proportionate costs, which shall be deposited within a period of two months from today. The claimants are each entitled to 25% of compensation together with interest. The claimants are entitled to withdraw the amount, as and when deposited, in proportion as determined, without furnishing any security. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: 30.06.2017
Dsr