

HON'BLE SRI JUSTICE M.S.K.JAI SWAL

M.A.C.M.A.No.87 of 2010

JUDGMENT:

This appeal is filed by the respondents/APSRTC in O.P.No.183 of 2005, against the award dated 02.02.2008 passed by the learned XVI Additional Chief Judge-cum-II Additional Metropolitan Sessions Judge, Hyderabad (for short "the Tribunal).

The respondents/claimants filed the claim petition claiming a compensation of Rs.4,00,000/- on account of death of their son N.Ravikanth Rao, who died in a road accident that occurred on 02.10.2004. The claimants are the parents of the deceased N.Ravikanth Rao.

The brief case of the claimants is that on 02.10.2004 while their son N.Ravikanth Rao was traveling in a Qualis vehicle bearing registration No.AP 28 BA-6723 from Hyderabad to Bhadrachalam and at about 1 p.m when crossed Narkatpally village on NH.9, the RTC bus bearing registration No.AP 11Z-4159 came in opposite direction in a rash and negligent manner and dashed quails vehicle, due to which, their son sustained grievous injuries and died.

The deceased was only son of the claimants, aged about 24 years, he completed law degree and was going to set up practice as Lawyer and was earning Rs.5,000/- per month on Real Estate business.

The appellant/Insurance Company filed the counter denying its liability and manner of accident. It is contended that there is no rash and negligence on the part of the driver of the RTC bus and the amount claimed is excessive.

On behalf of the claimant, P.Ws.1 & 2 were examined and got marked Exs.A.1 to A.10. On behalf of the respondents, no oral or documentary evidence is adduced.

The Tribunal, taking into consideration the oral and documentary evidence on record, awarded compensation of Rs.4,00,000/- with interest @7.5% p.a. from the date of petition till the date of deposit. Questioning the said award, the appellant filed this appeal.

The main stay of the contention of the appellants is that there is contributory negligence on the part of the vehicle in which the deceased was traveling and therefore, the same has to be taken into consideration while determining the compensation. It is further contended that the Tribunal has erred in awarding compensation of Rs.4,00,000/- which is excessive and exorbitant and hence, the same needs to be reduced.

In order to determine as to whether there was any contributory negligence on the part of the two drivers, proper evidence should be placed before the Tribunal. On behalf of the claimants, PW 2, who is said to be the eyewitness and who traveled along with the deceased, clearly stated that the accident occurred solely due to the rash and negligent driving on the part of the driver of the offending RTC bus and the investigation made by the police also established that the driver of the RTC bus is responsible for the accident. Absolutely, there is no iota of evidence either oral or documentary produced on behalf of the appellants/RTC to show that there is contributory negligence on the part of the deceased. In that view of the matter, the appellants cannot be heard saying that there is contributory negligence and hence the entire responsibility for the accident could not be put on the shoulders of the driver of the RTC bus. There is no substance in this submission in view of the above reasons.

On behalf of the respondents, it is submitted that the deceased was a Law graduate and intending to take admission in post graduation course and

award of Rs.4,00,000/- cannot in any way be said to be excessive or exorbitant.

Heard both side and perused the material on record.

The admitted fact is that the deceased having completed Law graduation has even appeared the entrance test to do post graduation in Law. He was a man, aged about 24 years and he was not married. The Tribunal has taken the notional income of the deceased at Rs.3,000/- per month and applied multiplier '15' taking into consideration the age of his mother. This appears to be erroneous approach on the part of the Tribunal.

Admittedly, the deceased was a bachelor and having arrived at the notional income of the deceased at Rs.3,000/-, 50% thereof should be deducted towards his personal expenses and the remaining 50% to be taken as contribution to the family.

In so far as the multiplier is concerned, the age of the deceased should be taken into consideration, and if that is done, the appropriate multiplier is '18', therefore, the loss of dependency should be calculated as Rs.1500/- x 12 x 18, and it would come to Rs.3,24,000/-. Under this head, the Tribunal has awarded a sum of Rs.3,60,000/-, which is excessive by Rs.26,000/-

With regard to the award granted under other heads viz., loss of love & affection, loss of estate, funeral expenses and transport charges, they are all just and reasonable and they do not warrant any reduction.

In view of the foregoing discussion, the compensation awarded by the Tribunal under the head "Loss of Dependency" is to be reduced from Rs.3,60,000/ to 3,24,000/- The rest of the award is confirmed. Resultantly, the compensation of Rs.4,00,000/- is reduced to Rs.3,64,000/-.

The MACMA is accordingly allowed in part. No order as to costs.

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

M.S.K.JAI SWAL, J

Date: 13th June, 2017
Dsr

