

THE HON'BLE SRI JUSTICE N. BALAYOGI

M.A. C.M.A. No.1724 of 2010

JUDGMENT :

The appellants – APSRTC aggrieved by the Award and Decree dated 26.8.2008 passed in M.O.P. No.13 of 2005 by the II Additional District Judge-cum-Chairman, Motor Accidents Claims Tribunal at Visakhapatnam, preferred this appeal besides other grounds on the ground that the bus in question was not involved in the accident, hence the Tribunal erred in holding that the accident has occurred due to rash and negligent driving of the driver of APSRTC bus and that the deceased himself was responsible for the accident. Further, the petition is bad for non-joinder of owner and insurer of the motorcycle. It is further contended that the Tribunal erred in assessing the income of the deceased at Rs.5,462/- and applying the multiplier '17' to the age of the deceased i.e., 31 years.

On the other hand, respondents/claimants contended that the accident was due to rash and negligent driving of the driver of APSRTC bus bearing No.AP 10 Z 3780 and the Tribunal rightly considered the evidence of P.W.3 and Exs.X1 and X2 – pay slip and service register of the deceased. There is no error or irregularity in the order passed by the Tribunal.

For convenience sake, the parties are hereinafter referred to as they were arrayed in the O.P before the tribunal.

The brief claim of claimants is that the first petitioner is the wife and the 2nd petitioner is daughter and petitioners 3 and 4 are parents of deceased/Evani Venkata Satya Nagendra Prasad. While so, on 6.11.2004, while the deceased was proceeding on motorcycle towards NSTL road on far left side of the road in a very cautious manner, APSRTC bus bearing No.AP 10 Z 3780 driven by its driver with high speed in a rash and negligent manner without following traffic rules or blowing any horn and dashed the motor cycle. As a result, he fell down on the road and sustained grievous bleeding injuries. Immediately after the accident, the co-employee of the deceased shifted him to Seven Hills Hospital, Visakhapatnam, but he died in the hospital.

The deceased was 37 years old, hale and health and was working as a Senior Technician in Rain Calcining Limited, Naval Base, Visakhapatnam, and used to earn Rs.7,000/- per month. Due to sudden death, claimants became destitute. Had he been alive, he would have been in higher position.

Respondents 2 and 3 in filed counter denying the manner of the accident, the employment and income of the deceased and also future prospects. It is further contended that as per the information given by the 1st respondent, accident occurred only due to negligence on the part of the deceased himself.

In view of pleadings of both parties, the following issues are settled for trial by the Tribunal:

1. Whether the accident occurred on account of the rash and negligent driving of the vehicle by its driver and whether it resulted in death of victim?
2. Whether the petitioners are entitled for compensation? If so, to what amount?
3. Which of the respondents are liable to pay compensation?
4. To what relief?

In support of claimants, P.Ws.1 to 3 were examined and Exs.A1 to A4 and Exs.X1 and X2 were got marked. On behalf of respondents, no oral or documentary evidence is adduced.

To prove the rash and negligence, the claimants examined the 1st petitioner as P.W.1 and the eye-witness to the accident as P.W.2. The consistent evidence of P.W.1 is that she is the wife, 2nd petitioner is minor daughter and petitioners 3 and 4 are her parents-in-laws i.e., parents of the deceased Venkata Satya Nagendra Prasad. There is no suggestion with regard to relationship between petitioners and the deceased Venkata Satya Nagendra Prasad. The only suggestion to P.W.1 is that petitioners are not entitled for any compensation. Though dependency is denied, respondents 2 and 3 did not adduce any oral or documentary evidence. Hence, the unimpeachable evidence of P.W.1 well established that petitioners are wife, minor daughter and parents of the deceased Venkata Satya Nagendra Prasad respectively.

P.W.1 stated that on 6.11.2004 at 1.45 PM near NSTL Road, Visakhapatnam, while the deceased was going by his motorcycle towards NSTL road on the extreme left side of the road, an RTC bus

bearing No.AP 10 Z 3780 driven by its driver in a rash and negligent manner dashed the motorcycle on its backside, as a result, the deceased fell down and received grievous injuries and immediately he was admitted in the Seven Hills Hospital, Visakhapatnam, wherein he died. During the course of cross-examination, she admitted that she is not an eyewitness to the accident. Therefore, the evidence of P.W.1 is no use in determining rash and negligence of the driver of the RTC bus.

Petitioners also examined one, Gona Srikrishna, co-employee of the deceased as P.W.2 whose evidence is that on 6.11.2004 in the afternoon while he was going to petrol bunk near NSTL office, an RTC bus bearing No.AP 10 Z 3780 driven by its driver came in a rash and negligent manner and dashed the motorcycle and as a result, the driver of the motorcycle fell down on the road and received grievous injuries. He identified the motorcyclist as his co-employee of his company and immediately he along with another person admitted him in the Seven Hills Hospital.

Ex.A1 is the certified copy of F.I.R. Ex.A4 is altered F.I.R. Ex.A1 clearly goes to suggest that one Gona Srikrishna lodged a report before the S.H.O., V Town Traffic Police Station, Visakhapatnam, basing on which the crime was registered on 6.11.2004 in which the manner of accident was specifically asserted that the accident occurred due to rash and negligent driving of the driver of the RTC bus. P.W.2 categorically stated the manner of the accident that the driver of the bus drove the bus in a high speed and rash and negligent manner and

dashed behind the motorcycle. P.W.2 clearly stated in the cross-examination that RTC buses plied via NAD road and NSTL in route No.104 and the deceased has to go in the same route and the accident occurred at NSTL. At one breath P.W.2 stated that he did not give any complaint to Police and later he recovers his memory and stated that he gave the FIR to the Police. Therefore, it must be a mistake to say that he did not give any complaint to the Police. However, as seen from Ex.A1, P.W.2 lodged the complaint. So, P.W.2 is an eyewitness to the accident. The evidence of P.W.2 is acceptable for the reason that he is also a colleague of the deceased who identified the deceased and shifted him to the hospital. Nothing was elicited from cross-examination of P.W.2 to discard his testimony.

Further, the driver of the RTC bus is the best person to speak about the accident, but, for the reasons best known to them, appellants did not choose to examine the driver. It is not the case of appellants that the driver is not available or is not working under them. The driver was under the control of appellants, so appellants having control and knowledge of the driver, did not examine him. In the absence of any rebuttal evidence to this effect, I find that the evidence of P.W.2 supported by Ex.A1 and A3 well established that the accident was due to rash and negligence of the driver of the RTC bus bearing No. AP 10 Z 3780.

Absolutely there is no oral or documentary evidence to establish any negligence on the part of the deceased. Hence, the appellants

failed to establish any negligence on the part of the deceased. Therefore, the finding of the Tribunal that the accident occurred due to rash and negligence of the driving of the driver of RTC bus bearing No.AP 10 Z 3780 is legal and sustainable.

The contention of appellants is that the petition is bad for non-joinder of owner and insurer of the motorcycle. Since in view of the clear finding of the Tribunal that the accident was due to rash and negligent driving of the driver of the RTC bus bearing No.AP 10 Z 3780 and as appellants failed to adduce any rebuttal evidence and establish that there is no negligence on the part of the driver of the RTC bus, it is purely due to negligence of the deceased himself, I find that the insured and the insurer of the motorcycle on which the deceased was travelling are not proper and necessary parties and the claim can be adjudicated in their absence. Hence, I find no substance in the contention of appellants that the petition is bad for non-joinder of owner and insurer of the motorcycle.

The appellants further contended that there is no evidence to the effect that the deceased was earning Rs.5,462/- at the time of the accident.

The evidence of P.W.1 is that her husband at the time of accident was aged 31 years, hale and healthy and working as Senior Technician in Rain Calcining Limited, Naval Base, Visakhapatnam, and used to earn Rs.7,000/- per month. During the cross-examination, P.W.1 stated that she can file document to prove salary of her husband

and denied the suggestion that her husband was not earning Rs.7,000/- per month. With regard to age, the suggestion was her husband was more than 31 years old.

To substantiate the age and income of the deceased claimants examined the Senior Personnel Officer, Rain Calcining Limited as P.W.3 whose evidence was that the deceased E.V.S. Nagendra Prasad worked in their company. Ex.X1 is the pay slip for the month of October, 2004, according to which the gross salary was Rs.6,670/- and total deductions were Rs.1,208/- and the net salary was Rs.5,462/-. Ex.X2 is the service particulars of late E.V.S.N. Prasad. According to which, he was working as Senior Technician with employee code No.478. Joined in duty on 18.2.1998 and the age of retirement is 58 years. The salary last drawn was Rs.6,670/-. The date of birth is 1.7.1973. Having taken the date of birth of the deceased as 1.7.1973 and the accident was on 6.11.2004, the age of the deceased at the time of accident would come to 31 years. The consistent evidence of P.W.1 is also that her husband was 31 years old at the time of accident. P.W.3 during cross-examination stated that he was looking after the entire office files as Senior Personnel Officer and the Assistant General Manager directed him to depose in the Court. It is also his evidence that basing on the progress of the employee, the promotions will be given. There is future to the deceased and possibility of getting promotion, but he cannot be demoted. Had the deceased been alive, he will continue in service till 2031.

The Tribunal, having considered the age of the deceased as 31 years, applied multiplier '17', but as per the case of *Sarla Verma v. DTC*¹ the relevant multiplier in this case is '16', so the multiplier has to be modified from '17' to '16' as the claimants are four in number. It was held in the case of *Sarla Verma's case* (where the deceased was survived by a widow, three minor children, parents and grand father who later died) as an earning member, the deceased would have spent more on himself than the other members of the family apart from the fact that he would have incurred expenditure on travelling/transportation and other needs. Where number of dependents of the family are 4 to 6, the deduction should be 1/4th, but, whereas, the Tribunal below in the impugned award deducted 1/3rd which has to be modified according to *Kerala SRTC v. Susamma Thomas*². Therefore, I hope that the multiplier to be used should be as mentioned in column No.4 of the table (prepared by applying *Susamma Thomas's case* (2 supra), *UP SRTC v. Trilok Chandra*³ and *New India Assurance Co. Ltd. V. Charlie*⁴) which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is Multiplier-17 for 26 to 30 years, Multiplier-16 for 31 to 35 years, Multiplier-15 for 36 to 40 years, Multiplier-14 for 41 to 45 years and Multiplier-13 for 46 to 50 years, then reduced by two units for every five years, that is, Multiplier-11 for 51 to 55 years, Multiplier-9 for 56 to 60 years,

¹ (2009) 6 SCC 121

² (1994) 2 SCC 176

³ (1996) 4 SCC 362

⁴ (2005) 10 SCC 720

Multiplier-7 for 61 to 65 years and Multiplier-5 for 66 to 70 years. Accordingly, by applying the same the relevant multiplier applicable is only '16', but not '17' and deduction shall be $1/4^{\text{th}}$ but not $1/3^{\text{rd}}$ which the deceased should be incurred towards maintaining himself had he been alive.

The Tribunal took the net earnings at Rs.5,462/- per month at the time of the accident and there is no illegality or error in it. Therefore, the income of the deceased at the time of accident can be taken at Rs.5,462/- per month or Rs.65,544/- per annum. If $1/4^{\text{th}}$ of the earnings of the deceased are deducted, it works out to Rs.16,386/- per annum. Thus, after deducting the $1/4^{\text{th}}$ income from the net salary of the deceased, it comes out to Rs.49,158/- per annum, which is the dependency. If the multiplier '16' is applied to it, it works out to Rs.7,86,528/-. Thus, the total dependency of claimants comes to Rs.7,86,528/-.

In addition to the said amount, claimants are also entitled to amounts as awarded by the Tribunal i.e., a sum of Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate. The 1st petitioner being the widow aged 27 years, the Tribunal awarded Rs.5,000/- towards consortium. All these amounts are not questioned by the claimants by filing cross-appeal. Accordingly, claimants are entitled to total compensation of Rs.7,96,028/-. Respondents 1 to 3 are jointly and severally liable to pay the said compensation to petitioners with subsequent interest at 7.5% per annum from the date of filing of

petition i.e., 22.12.2004 till the date of deposit, which shall be deposited by appellants after deducting the amount, if any, already paid and shall be deposited within 30 days from the date of receipt of a copy of this order.

With regard to apportionment of compensation amount of Rs.7,96,028/- among petitioners, the 1st petitioner is entitled to Rs.3,96,028/-, the 2nd petitioner is entitled to Rs.2,00,000/- and petitioners 3 and 4 are entitled to Rs.1,00,000/- each.

On such deposit, petitioners, 1, 3 and 4 are permitted to withdraw balance apportioned amount with costs and interest and the amount apportioned to the 2nd petitioner shall be kept in a fixed deposit in any nationalized bank till she attains majority. After her attaining the majority, as per requirement, she can file a petition before the concerned Court for permission of withdrawal.

Subject to above modifications, appeal is disposed of. No order as to costs.

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

Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE N.BALAYOGI

01st November, 2017
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