

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.230 OF 2014

JUDGMENT:

The present appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act'), requesting to grant the balance amount as the compensation of Rs.2,40,000/- awarded by the Chairman, Motor Accidents Claims Tribunal - cum - IV Additional District Judge, Kurnool (for short 'Tribunal') is on lower side and, in fact, the Tribunal ought not to have apportioned negligence to the extent of 50% on the deceased – G. Sivanna whose legal representatives are the appellants herein and petitioners in M.V.O.P. No.255 of 2007 as they laid the claim for award of Rs.8,00,000/-.

2. The aforesaid amount was granted by the Tribunal by order and decree, dated 30.05.2011, in the aforesaid M.V.O.P.

3. The appellants herein, who are the legal representatives of the deceased, are petitioners in the aforesaid M.V.O.P., while respondent - erstwhile Andhra Pradesh State Road Transport Corporation is the respondent as such.

4. For the sake of convenience, the parties hereinafter referred to as they were arrayed in the aforesaid MVOP before the Tribunal.

5. Heard Sri G. Sravan Kumar, learned counsel for the appellants - petitioners, and Sri Aravala Rama Rao, learned standing counsel for respondent - Corporation.

6. The deceased, admittedly was an RTC driver who was driving the RTC Bus bearing registration No.AP 11Z 519, whereas RW.1 - M.R. Naik was the driver of the opposite RTC bus bearing registration No.AP 11Z 591. There was collision between both the vehicles. As a result, the driver of the bus bearing registration No.AP 11Z 519 succumbed to injuries. His sons and daughter, who are the petitioners in the aforesaid MVOP, filed the claim petition for award of Rs.8.00 lakhs against the Corporation. The fact-situation occurring in the present case is not in dispute even the liability fixed to the extent of 50% was not disputed by the respondent.

7. Now, the questions that would arise for consideration are:

- (ii) Whether the amount awarded by the Tribunal is just and adequate, and whether the petitioners are entitled to enhancement of compensation?
- (iii) Whether there was no negligence on the part of the deceased?

8. Touching the second question, when examined the documentary evidence, Ex.A-1, which is certified copy of First Information Report, shows that Mr. M.R. Naik, who is RW.1, driver of the opposite bus bearing registration No.AP 11Z 591, lodged the complaint and the deceased was shown as accused. It appears

subsequently due to death of the deceased - G. Shivanna, the crime was closed. In the presence of such documentary evidence, and more particularly, the evidence of RW.1 is clinching enough to show the negligence of the deceased, certainly, the submission that there was no negligence on the part of the deceased and he did not contribute to the accident cannot be accepted.

9. As regards quantum of compensation, the Tribunal has taken the age of the deceased as 50 years, the monthly salary as Rs.9,751/- or Rs.1,17,012/- per annum. But, somehow, while taking the contribution, the Tribunal has taken $1/3^{\text{rd}}$ rather than $2/3^{\text{rd}}$, instead of holding that $1/3^{\text{rd}}$ was the amount which the deceased used to incur towards his personal living expenses, and there appears to be some sort of confusion for the Tribunal and, therefore, it has taken $1/3^{\text{rd}}$ as contribution and $2/3^{\text{rd}}$ as living expenses, perhaps by inadvertence. Thus, when $1/3^{\text{rd}}$ i.e., Rs.39,004/- (Rs.1,17,012/- x $1/3$) is deducted from the annual income of Rs.1,17,012/-, it works out to Rs.78,008/- [Rs.1,17,012/- - 39,004/-]. But, since the dependants are (4) in number in view of the law declared by the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**¹, $1/4^{\text{th}}$ deduction (i.e. Rs.29,253/-) is permissible towards personal living expenses. In which case, it works out to Rs.87,759/- (Rs.1,17,012/- - Rs.29,253/-). The relevant multiplier factor is '13' for the age group between 46-50 years as per the table formulated by the Hon'ble Supreme Court in

¹. 2009 ACJ 1298

Sarla Verma¹, and when the same is applied to the multiplicand Rs.87,759/-, the loss of dependency works out to Rs.11,40,867/-. 15% thereof towards future prospects is additionally entitled as per the law declared by the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**², which works out to Rs.1,71,130/-. Thus, the total amount would work out to Rs.13,11,997/- [Rs.11,40,867/- + Rs.1,71,130/-]. Since the deceased contributed to the extent of 50%, when 50% of Rs.13,11,597/- is taken out, the loss of dependency including additional amount towards future prospects would work out to Rs.6,55,998/-. Towards conventional sums, the petitioners are entitled to Rs.50,000/- in view of the decision in **Ramilaben Chinubhai Parmar and others v. National Insurance Company and others**³. Thus, the petitioners are totally entitled to Rs.7,05,998/-, rounding it off to Rs.7,06,000/- as the compensation.

10. Concerning rate of interest, the Tribunal granted the same at 7.5% per annum, which is in tune with the rate of interest approved by the Hon'ble Supreme Court in **Rajesh**². Hence, the same is maintained on the enhanced amount even.

11. In the result, the appeal is allowed in part, and the order and decree, dated 30-05-2011, in M.V.O.P. No.255 of 2007, passed by the Tribunal, are modified, enhancing the compensation to Rs.7,06,000/- (Rupees seven lakhs and six thousand) from

². 2013 ACJ 1403

³. 2014 ACJ 1430

Rs.2,40,000/- with interest at the rate of 7.5% per annum thereon from the date of petition till date of realization. The enhanced amount shall be apportioned among the petitioners in the same proportion in which the original compensation amount was directed to be apportioned and disbursed by the Tribunal. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal shall stand closed.

October 20, 2017
Mgr

A. SHANKAR NARAYANA, J

