

THE HON'BLE SRI JUSTICE N.BALAYOGI

M.A. C.M.A. Nos.4669 and 1791 of 2008

COMMON JUDGMENT :

1. As the issue involved in these appeals is common, these appeals are disposed of by this common judgment.

M.A. C.M.A. No.4669 of 2008 :

2. The appellant/1st respondent/owner of the bus, aggrieved by the Award and Decree dated 31.12.2007 in O.P.No.598 of 2006 passed by the Chairman, MACT-cum-I Additional District judge, Karimnagar, preferred this appeal, besides other grounds, on the ground that the Tribunal erred while exonerating the liability of APSRTC and Insurance Company while fastening the liability against the appellant for payment of compensation to respondents 1 to 3/claimants.

3. The appellant contended that Ex.B2-policy was renewed by the 5th respondent as a continuation of the proposal form submitted in the year 2001 clearly indicating that the vehicle would be hired to the 4th respondent-RTC, therefore, the contention of the 5th respondent that the appellant had not intimated to the insurance company with regard to hiring of the bus is not correct and consequently the finding of the Tribunal that the RTC and the Insurance Company are not liable to pay the compensation is nothing but unsustainable in the eye of law.

4. The Tribunal ought to have seen that in the tender notice or in the agreement entered with the appellant by RTC with regard to hiring the bus i.e., the bus which involved in the accident, there is no condition mentioned imposing obligation on the part of the owner of the vehicle that he shall have IMT 44 endorsement from the concerned Insurance Company. Hence, the finding of the Tribunal that RTC is not liable to pay the compensation is nothing but contrary to the material available on record.

5. The appellant further contended that the Tribunal grossly erred in relying on conditions 5 and 6 of the agreement, dated 18.4.2006 while holding that RTC and the Insurance Company are not liable to pay the compensation. The appellant further contended that the Tribunal has not properly assessed the income as well as the dependency of the claimants.

A.S. No.1791 of 2008 :

6. The appellants are claimants in the main O.P.No.598 of 2006. Their contention is that the insurance policy – Ex.B2 was in force as on the date of accident, hence the Tribunal erred in exonerating the 3rd respondent, who is the insurer and the 2nd respondent – RTC from their liability, which is illegal and against the material available on record. It is further contended that the Tribunal failed to appreciate the evidence of P.W.3 and Ex.A4 while considering the age of the deceased. The assessing of the age of the deceased by the Tribunal is unscientific and imaginary. The Tribunal failed to award any amount

under consortium, towards loss of estate and an amount of Rs.5,000/- towards funeral expenses and also failed to apply proper multiplier.

7. Since both the appeals arose out of the same award and decree, for the sake of convenience, the appellants/claimants in M.A. C.M.A. No.1791 of 2008 are being referred as appellants and the appellant and other respondents 4 and 5 – RTC and insurance company in M.A. C.M.A. No.4669 of 2008 are being referred as respondents.

8. The claim of appellants/claimants in brief is as follows :

The appellants 1 to 3 are wife and daughters of deceased P.Venkata Ramulu who was working as Attender-cum-Watchman in the office of the Assistant Director of Sericulture, Karimnagar. On 24.4.2006 at about 8.30 PM while the deceased was proceeding to Ramanagar on his cycle after completion of his night duty and when he reached near Muniganti Venkataiah Hotel and crossing the road, in the meantime, the driver of the bus bearing No.AP-25-U-0200 of Kamareddy depot came in a rash and negligent manner and dashed his cycle. Immediately after the accident, he was shifted to District Headquarters Hospital, Karimnagar, wherefrom he was referred to MGM Hospital and while shifting to MGM Hospital, he succumbed to injuries.

9. The deceased was 48 years old and used to draw monthly gross salary of Rs.9,469/- and contribute the same for the family and still he is having 12 years of service. Due to sudden death, the

appellants/claimants sustained great mental shock and agony and loss of love and affection of the deceased.

10. The 1st respondent in the O.P. filed counter contending that at the time of the accident, the deceased was going on cycle in a rash and negligent manner and on seeing his driving, the driver of the bus stopped the bus, in spite of which, the deceased lost his control and hit the bus and sustained injuries. The accident is due to self-negligence of the deceased himself.

11. The second respondent/RTC filed counter contending that according to condition Nos.5 and 6 of the agreement, the owner and insurer of the bus will be liable to pay the compensation if the bus is involved in any accident.

12. The 3rd respondent/Insurance Company in the written statement contended that the accident occurred during the course of hire of the bus, as such, for all risks which arose during the course of agreement, the 2nd respondent/RTC alone is liable to pay the compensation.

13. Basing on the above pleadings the Tribunal settled the following issues for trial :

1. Whether the accident was occurred due to rash and negligent driving of the bus bearing No.AP-25-U-0200 by the 1st respondent?
2. Whether the petitioners are entitled to recover compensation and if so to what amount and from whom?
3. To what relief?

14. On behalf of claimants, P.Ws.1 to 3 were examined and Exs.A1 to A6 were got marked. On behalf of respondents, R.Ws.1 and 2 were examined and Exs.B1 and B2 were got marked.

15. The contention of the owner of the bus/appellant in MA CMA No.4669 of 2008 is that Ex.B2 policy was renewed and the proposal for renewal submitted in the year 2001 is clearly indicating that the vehicle would be hired to the 4th respondent-RTC, hence the contention of the 5th respondent/insurer that the owner had not intimated the insurance company with regard to hiring of the bus is incorrect.

16. The consistent evidence of P.W.1, who is none other than the wife of the deceased Venkatramulu is that at about 8.30 AM while her husband was proceeding towards Ramnagar on his cycle to get household articles and when he reached near Hotel Muniganti Venkataiah and while trying to cross the road, the driver of the bus bearing No.AP 25 U 0200 drove the bus in a rash and negligent manner with high speed and dashed her husband from backside and as a result he sustained bleeding head injuries and succumbed to head injuries. Her further evidence is that since the accident occurred due to rash and negligent driving of the driver under 1st respondent, the vehicle was operated and hired with APSRTC, Kama Reddy Depot which was validly insured to the 3rd respondent, all respondents 1 to 3 are jointly and severally liable to pay the compensation. During cross-examination, P.W.1 stated that she does not know whether the RTC is liable or not and in the chief itself she stated that she does not know

whether the owner/appellant in MA CMA No.4669 of 2008, already insured the vehicle.

17. Since the contention with regard to intimation of hiring to the insurance company is concerned, it is the owner of the bus/hirer and RTC are proper persons to speak about the intimation of hiring the bus to the RTC.

18. To substantiate the contention of the APSRTC, its Assistant Manager examined as R.W.1, whose evidence is that APSRTC took the bus bearing No.AP 25 U 0200 on hire and entered into the agreement under the original of Ex.B1 – copy of agreement between RTC and the 1st respondent/owner of the bus. As per the terms of the said agreement, it is the duty of the hirer to get insured the vehicle and claim the insured amount. At the time of lease agreement under Ex.B1, they will verify the genuineness of the licence of the driver. But it did not speak about the insurance of the bus, but during cross examination it is stated that the RTC hired the bus from 18.4.2006 which was insured by the respondent No.1. The driver of the bus will be appointed by the hirer.

19. During the cross-examination, R.W.1 has further admitted that Ex.B1 agreement was signed by the Regional Manager of APSRTC and owner of the vehicle 1st respondent/appellant in MA CMA No.4669 of 2008. He further admits that the policy is also in the custody of the Regional Manager, Nizamabad. He also admitted that they will report the premium amount to the owner of the bus.

20. The Senior Assistant of the United Indian Insurance Company Limited was examined as R.W.2 who corroborates with R.W.1 that the bus bearing No.AP 25 U 0200 was hired bus insured with Ex.B2 policy enforced from 1.3.2006 to 28.2.2007. As per IMT 44 the owner of the vehicle has to pay premium to cover the risk if it is given on hire, but the owner of the vehicle/1st respondent has not paid any premium to cover the risk under IMT 44 and even he has not informed about the hiring of the bus to RTC.

21. Since respondents 1 and 2 - the owner of the bus and RTC, which hired the bus bearing No.AP 25 U 0200, entered into agreement under the original of Ex.B1 dated 18.4.2006, they are bound by terms and conditions of Ex.B1 agreement. The agreement further reveals that it was valid from 18.4.2006 to 30.6.2006.

22. As per Clause-5(ii) of Ex.B1 agreement, the owner shall keep his vehicle duly insured comprehensively duly incorporating the APSRTC as the hire of the vehicle in the policy against the column "Owner" to cover all risks and shall also pay the M.V. Taxes and other taxes and levies payable as a consequence of the operation of the above vehicle to all the authorities concerned and the proposal form shall be signed by both the owner and the hirer.

23. According to Clause-6(iii) of Ex.B1 agreement, the Corporation shall reimburse the owner the Motor Vehicles Tax and Insurance paid by him in respect of the Operation carried out once in 15 days in proportionate rate.

24. This fact covered by clauses 5(ii) and 6(iii) of agreement are well corroborated and supported by the evidence of R.W.1. A combined reading of Clause-5(ii) and Clause 6(iii) goes to suggest that it is the owner of the bus who shall keep his vehicle duly insured comprehensively duly incorporating the APSRTC as hire of the vehicle and the proposal form shall be signed by both the owner and hire and the hire will reimburse the insurance premium paid by the owner once in 15 days in proportionate rate.

25. Ex.B2 is the policy which was issued basing on the proposal and declaration dated 26.6.2002 and signed on 2.11.2006. Ex.B2 was in force from 1.3.2006 to 28.2.2007. Absolutely there is no evidence that the proposal form was contained the signature of the owner and hire/APSRTC. In the policy under Ex.B2, Kotak Mahindra Finance, Secunderabad branch, is mentioned as financier and the bus is hypothecated to it. Though the owner of the bus in the grounds of appeal stated that the owner while obtaining insurance for the vehicle bearing No.AP 25 U 0200 from the insurance company/5th respondent submitted the proposal form in the year 2001 itself and in the proposal form he has clearly mentioned that the vehicle would be given on hire basis to RTC/4th respondent. Accordingly, the vehicle was insured with the 5th respondent and the same is being renewed from time to time. The owner did not choose to enter into the witness box and depose the facts and he has not taken any steps to get produced the

proposal form submitted by him in 2001 itself and the agreement between the RTC and the owner dated 18.4.2006.

26. As per Clause-5(ii) the proposal form must be signed by both hirer and the hire, but by 2001 there is no such proposal and it is only on 18.4.2006 the agreement under Ex.B1 was entered into, hence the contention of the owner that he has intimated the insurance to the RTC, simultaneously intimated hiring the bus to insurance company is an afterthought and even without any such intimation. If such intimation was there, there should be an entry in Ex.B2 policy itself. No doubt, Ex.B2 policy was in force as on the date of the agreement under Ex.B1 as well as the date of accident.

27. It is the further contention of the insurance company that as per IMT 44 the owner has to pay additional premium for the passengers and which was not paid, hence the insurance company is not liable to pay the compensation.

28. R.W.1 admitted that the policy copy will be in the custody of the Regional Manager, Nizamabad who entered into Ex.B1 agreement with the owner and signed on it. R.W.2 is the proper person to speak about the terms and conditions of Ex.B2 policy. Admittedly, the vehicle bearing No.AP 25 U 0200 was insured by the owner with the United India Insurance Company Limited under Ex.B2 policy which is in force from 1.3.2006 to 28.2.2007, whereas the accident occurred on 24.4.2006 by which date the policy was in force. Ex.B1 agreement was

dated 18.4.2006 i.e., subsequent to Ex.B2 policy and in which the Kota Mahindra Finance is recorded as financier.

29. In the case of *APSRTC, Hyderabad and another v. B.Kanakaratnabai*¹ the High Court held that the statutory liability of the Insurance Companies under Section 147(5) of the Act of 1988 and Section 95(5) of the Act of 1939 exists notwithstanding anything contained in any other law. The Full Bench of the High Court of Andhra Pradesh in *Madineni Kondaiah v. Yaseen Fatima*² mandate that the insurance companies must be held liable insofar as the insurable interest of such passengers/third parties is concerned. The public liability imposed by the statute therefore cannot be lightly brushed aside by the Insurance Companies relying on technicalities. It was further held that Section 72 of the Act of 1988 deals with grant of stage carriage permits while sections 73 and 74 thereof deal with contract carriage permits. 'Transport vehicle' is defined under Section 2(47) of the Act of 1988 to mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle as defined under Section 2(35) of the Act of 1988.

30. Section 2 (35) of the Act of 1988 defines 'public service vehicle' as any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motorcab, contract carriage and stage carriage.

¹ 2013 (1) ALD 644 (FB)

² AIR 1986 AP 62 (FB)

31. A perusal of Ex.B2 goes to suggest that through out the policy terms and conditions the liability under Ex.B2 policy is subject to IMT endorsement Nos., printed herein/attached hereto 5, 21, 38, 40. Nowhere under Ex.B2 there is any reference with regard to IMT 44. R.W.2 in the evidence in chief stated that the coverage of Ex.B2 policy will be exist only when the vehicle is used by the insurer for their use, if the vehicle is given on hire, the insured has to pay additional premium for coverage of passengers and further admitted that the passengers in the particular case are third parties, Respondent No.1, who is the owner of the vehicle and the hirer, has not paid the premium to cover the risk under IMT 44 and since there is no coverage under IMT 44, the insurance company is not liable to pay the compensation as respondent No.1 hired the vehicle to respondent No.2/RTC.

32. During the cross-examination R.W.2 admits that since the owner did not inform about the hiring to APSRTC, they did not demand to pay premium under IMT 44. There is a well suggestion to R.W.2 that there is no provision of IMT 44 under Ex.B2 and he has deposed falsehood to the above liability and clearly admits that the policy Ex.B2 covers the liability to third parties. The additional premium payable under IMT 44 is Rs.138/- in the instant case, as already discussed, the policy was taken even prior to entering into Ex.B1 agreement and the only name of the financier is noted under Ex.B2 policy. There is no mention about the endorsement required under IMT 44. In the instant case, as already discussed, there is no IMT 44 in Ex.B2.

33. The owner of the bus paid the premium towards liability of passengers and third parties risk. The insurance company collected the said premium and issued Ex.B2 policy. Once the insurance company collected the premium covering the risk to the passengers and third parties, it is no longer open to the insurance company to escape their liability. The failure in paying the additional premium as per IMT 44 at best would absolve the insurance companies for covering the liability and loss, if any, of the APSRTC. It would not extend to protect the insurance companies from their acknowledged liability towards third parties as is evident from Ex.B2 policy. The purpose of compulsory insurance in the Act has been enacted with an object to advance social justice. Since the bus bearing No.AP-25-U-0200 was covered by Ex.B2 policy even though subsequently hired to APSRTC, the insurance company would not cease its liability so far as third parties/victims are concerned even if the owner or the purchaser did not give intimation as required under the provisions of the Act.

34. On principle it is not open to the insurance company to absolve its liability towards passengers/third party risk on the short ground that the insured vehicle has been given on hire without following the procedure prescribed.

35. On the above analysis, I am of the considered view that mere hiring of insured bus by the owner/1st respondent to APSRTC would not in any manner limit the liability and accountability of the insurance company, be it under the Act of 1988 or the Act of 1939 towards

passengers/third party risk covered by Ex.B2 policy issued by it in favour of the 1st respondent/owner. Notwithstanding the hiring of the insured bus by the owner/1st respondent to APSRTC the insurance company shall be solely and exclusively liable for payment of the compensation arising out of the accident, unless any of the ground in Section 149(2) of the Act of 1988/Section 96(2) of the Act of 1939 are made out. No such grounds were claimed or established by the insurance company.

36. The settled law is that under Section 147 of the Motor Vehicles Act no vehicle can be driven without insurance, whereas clause 5(ii) of Ex.B1 agreement between the owner and the APSRTC clearly stipulates that it shall be the liability of the owner to provide the comprehensive insurance covers for all kinds of accidental risks to the passengers, other persons/property. The said provisions are not shown to be opposed to any provision in the contract Act or any provisions contained under the 1988 Act. Hiring of public service vehicles is not prohibited under any of the provisions of the aforesaid laws. It could not be said to be inconsistent user by APSRTC. The Ex.B1 agreement is not shown to be illegal in any manner whatsoever nor shown to be opposed to the public policy. Absolutely there is no evidence showing that any of the provisions contained in Ex.B2 policy has been violated. In the present case, it is not a complete transfer of the vehicle, it has been given on hire for which there is no prohibition and no condition/policy of insurance as shown to prohibit plying of vehicle on

hire. The RTC has not used the vehicle for inconsistent purpose. Thus, in the absence of any legal prohibition and any violation of terms and conditions of the policy, more so, in view of the provisions of Section 157 of the 1988 Act, I am of the considered opinion that the insurer cannot escape the liability.

37. Under Section 2(30) of the Act 1988 a person in possession of the bus is considered to be an owner of the vehicle under Ex.B1 agreement. In my considered view, Ex.B1 agreement for hire cannot be said to be contract envisaged for exclusion in contractual liability in the second proviso to Section 147(1) of the 1988 Act. Therefore, the APSRTC can also be treated as owner for the purposes of Section 2(30) of the 1988 Act plying the buses under the lease agreement. Admittedly, the insurance company has insured the vehicle under Ex.B2. Even though there is no proof of intimation to the insurance company about hiring the bus by the owner to RTC, in my considered view, the insurer cannot escape the liability to indemnify as in the case of hiring of vehicle, intimation is not required to be given. The intimation has to be given by the transferee for effecting necessary changes in the policy. Even otherwise that would be a ministerial act and the insurer cannot escape the liability for that reason. Since APSRTC is hire and is owner for the purposes of Section 2 (30) of the provisions contained under Section 157 of the Act, insurance policy shall be deemed to be transferred. As such, the insurer is liable to make indemnification and cannot escape the liability so incurred by

APSRTC. Even though the owner of the vehicle may not have anything to do with the use of the vehicle at the time of the accident, he is contractually liable as the employer of the driver.

38. In *Purnya Kala Devi v. State of Assam*³ a three-Judge Bench of the Apex Court has categorically held that the person in control and possession of the vehicle under an agreement of hypothecation should be construed as the owner and not alone the registered owner and thereafter the Court has adverted the legislative intention, and ruled that the registered owner of the vehicle should not be held liable if the vehicle is not in his possession and control.

39. The contention of appellants in MA CMA No.1791 of 2008 is that the Tribunal failed to appreciate the evidence of P.W.3 and Ex.A4 while considering the age of the deceased. The Tribunal assessed the age in unscientific and imaginary manner. In the claim petition as well as in the evidence P.W.1 stated that her husband deceased P.Venkatramulu was 48 years who died in the motor accident on 24.4.2007 involving bus bearing No.AP 25 U 0200. Admittedly, the claimants did not file any proof of date of birth or age of the deceased. Ex.A1 is earliest report wherein the age of the deceased is noted as 48 years. In Ex.A2 – charge-sheet the investigation officer also mentioned the age of the deceased as 48 years. In Ex.A3 – inquest report the inquestdars also mentioned the age of the deceased as 48 years. In PME report under Ex.A4 also the age of the deceased was mentioned

³ (2014) 14 SCC 142

as 48 years. In Ex.A5 – Form No.54 the age of the deceased is noted as 48 years. P.W.3, the Junior Assistant in the office of the Assistant Director of Sericulture, Karimnagar also deposed in the chief that at the time of death of Venkatramulu, he was 48 years old. The age of the retirement is 60 years, so his left over service is 12 years. His total salary is Rs.9,469/-. Ex.A6 is the salary certificate of the deceased which also shows the total salary of the deceased as Rs.9,469/-. There are no deductions under Ex.A6. Therefore, the evidence of P.W.1 supported by P.W.3 and ExsA1 to A5 establish that the deceased was aged 48 years and used to draw monthly salary of Rs.9,469/- as per Ex.A6 and the evidence of P.W.3.

40. The Tribunal, having considered the evidence of P.W.3, who during the cross-examination stated that he came to the Court to depose only with regard to the service of the deceased and do not know the date of birth of the deceased and did not bring any record with regard to date of birth of the deceased and on perusal of photographs of P.W.1, who is wife of the deceased, the Tribunal felt that P.W.1 is more than 50 years old, whereas in the evidence, she stated that she is 46 years old. Further, the Tribunal has taken into consideration the age of claimants 2 and 3, who are daughters of P.W.1 and deceased, who are aged 25 and 21 years respectively and came to erroneous conclusion that in the absence of any definite proof and considering the personal appearance of P.W.1, the deceased must be aged between 55-60 years. Absolutely there is no rebuttal evidence or nothing discussed

in the award to discard the age of the deceased as mentioned in Exs.A1 to A5 and the evidence of P.Ws.1 and 3. Therefore, the finding of the Tribunal that the deceased must be aged between 55-60 years is imaginary and wrong assumption of the age, because the assessment is based on the appearance of P.W.1 and the ages of claimants 2 and 3. When the age of the deceased was clearly mentioned in the documents discussed above, there is no scope for the Tribunal to imagine the age without any scientific reasons as 55-60 years.

41. In the absence of any such rebuttal evidence and considering the oral evidence of P.Ws.1 and 3 and documentary evidence of Exs.A1 to A5, I am of the considered view that the deceased was 48 years old as on the date of accident. The Tribunal wrongly assessed the age of the deceased as 55-60 years and applied wrong multiplier '8'.

42. With regard to salary, the evidence of P.Ws.1 and 3 is that the deceased was drawing Rs.9,469/- net salary and which is supported by Ex.A6 – salary certificate. But, the Tribunal took the net salary as Rs.7,015/- which in fact is basic pay of the deceased. The Tribunal has not given any reasons to disbelieve Ex.A6 or the evidence of P.Ws.1 and 3. Therefore, the Tribunal erred in assessing the net salary of the deceased as Rs.7,015/- which is basic pay as mentioned in Ex.A6. The gross salary has to be taken as a salary of the deceased. Therefore, the tribunal erred in taking the salary of the deceased as Rs.7,015/-.

43. Having considered the oral evidence of P.Ws.1 and 3 and documentary evidence under Ex.A1 to A5, I find that the deceased was

48 years old by the date of accident and he was drawing gross salary of Rs.9,469/- per month. By applying *Sarla Verma v. DTC*⁴ case the relevant multiplier applicable to the age of the deceased is '13'. Since the claimants are three in number, by applying *Sarla Verma's case* (supra) 1/3rd has to be deducted towards the expenses of the deceased had he been alive.

44. As discussed supra, the age of the deceased is 48 years by the date of accident and the relevant multiplier applicable to the instant case is '13'. The income of the deceased can be taken at Rs.9,469/- per month or Rs.1,13,628/- per annum. With regard to future prospects, if the decision in *Sarla Verma's case* (supra) is applied, as the deceased was 48 years, which falls in the group of 40 to 50 years, 30% should be added to the income towards future prospects. Then, it works out to Rs.1,47,716/- (1,13,628 + 34,088). Out of the said income, 1/3rd has to be deducted towards personal living expenses of the deceased, which comes out to Rs.49,239/- per annum and thereby the contribution to the family of the deceased would come to Rs.98,477/- (1,47,716 – 49,239) per annum. As per the decision of the Apex court in *Sarla Verma's case* (supra) the appropriate multiplier applicable for the age of the deceased is '13'. The normal compensation would then work out to be 98,477 x 13 = Rs.12,80,201/-. Accordingly the claimants are entitled to Rs.12,80,201/- towards loss of earnings.

⁴ (2009) 6 SCC 121

45. Since the 1st claimant is aged about 46 years, I feel it is just and proper to award Rs.20,000/- towards loss of consortium to the 1st claimant modifying awarding of Rs.10,000/- towards loss of consortium by the Tribunal.

46. The Tribunal failed to award any compensation towards loss of estate and also funeral expenses, for which claimants are entitled to. Therefore, I award an amount of Rs.5,000/- towards loss of estate and Rs.5,000/- towards funeral expenses. Further, Claimants 2 and 3 are entitled to Rs.10,000/- each towards loss of love and affection of their father. Accordingly, the compensation comes to Rs.13,30,201/-.

47. In *Adam Indur Muttemma and Ors. Vs. Rathod Reddia and Ors.*⁵ this Court observed that the first division bench in *Pidigala Linga Reddy and Others Vs. Satla Srinivas*⁶ took a view that the Court can grant compensation exceeding the claim amount subject to payment of Court fee, if any, payable. Another Division bench of this Court in *New India Assurance Company Limited V. Chintnala*⁷ took exactly the opposite view holding that the Tribunal/Court is not empowered to award higher compensation than the compensation claimed by the claimants. The order of reference was made on 28.6.2002. Thereafter, this Court relied on the decision of the Apex Court in *Nagappa v. Gurudayal Singh and Others*⁸ wherein the Apex Court held that in appropriate case, wherefrom the evidence brought on

⁵ 2015 (4) ALD 585

⁶ 2001 (6) ALD 429 (DB)

⁷ 2002 (3) ALT 194 (DB)

⁸ (2003) 2 SCC 274

record, if the Tribunal/Court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. The only embargo is it should be just compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. The same view was thereafter reiterated by the Apex Court in *Rajesh and others Vs. Rajbir Singh and Others*⁹.

48. In view of the law laid down by the Supreme Court in the aforementioned judgments, I am of the opinion that the Tribunal erroneously took the view that the deceased must be more than 50 years old ignoring the consistent evidence of P.Ws.1 and 3 and also the documentary evidence under Exs.A1 to A5 perversely and took the multiplier '8'. It also took the monthly income as Rs.7,015/- which is basic pay under Ex.A6 and the gross salary is Rs.9,469/-. Further, the Tribunal did not grant future prospects of the deceased being aged 48 years, which falls under the group of 40-50 years as per *Sarla Verma's case* (supra) and 30% of the income should added towards future prospects which was not done.

49. Because of the erroneous conclusions the Tribunal came to the conclusion that the claimants are entitled to Rs.4,58,992/-, but, whereas, as per law and facts they are entitled to the compensation of Rs.13,30,201/-.

⁹ (2013) 9 SCC 54

50. By relying on the above decisions I find the compensation amount of Rs.13,30,201/- is just compensation for which claimants are entitled.

51. In the facts and circumstances discussed above and findings therein I am of the considered view that Sri Ch.Maruthi, who is the 1st respondent in M.A.C.M.A. No.1791 of 2008 and the appellant in M.A.C.M.A. No.4669 of 2008, is the original owner who is appointing authority of the driver and has control over him, whereas the APSRTC, which is the 2nd respondent in M.A.C.M.A. No.1791 of 2008 and 4th respondent in M.A.C.M.A. No.4669 of 2008 is the owner for the purposes of Section 2(30) of the provisions contained under Section 157 of the Act, 1988 and having supervisory control over the driver of the bus. By virtue of Ex.B2-policy the United India Insurance Company, which is 3rd respondent in M.A.C.M.A. No.1791 of 2008 and the 5th respondent in M.A.C.M.A. No.4669 of 2008 is jointly and severally liable to pay the said compensation along with Respondents 1 and 2 in the O.P. i.e., Ch.Maruthi and APSRTC.

52. Accordingly, both M.A.C.M.A. No.4669 of 2008 preferred by the owner of the bus bearing No.AP-25-U-0200 and M.A.C.M.A. No.1791 of 2008 preferred by claimants are allowed and the Award and Decree dated 31.12.2007 in O.P. No.598 of 2006 passed by the Chairman, MACT-cum-I Additional District Judge, Karimnagar, is set aside and modified enhancing the compensation awarded by the Tribunal from Rs.4,58,992/- to Rs.13,30,201/- together with interest

@ 7.5% per annum from the date of the petition i.e., 30.8.2006 till the date of realization with proportionate costs against respondents 1 to 3 in O.P. jointly and severally. The third respondent/United India Insurance Company Limited is directed to deposit the said amount after adjusting the amount if any already deposited or paid within a period of one month from the date of receipt of a copy of the order.

53. The award is apportioned among the claimants awarding Rs.8,30,201/- to the 1st claimant, she being a wife of deceased and Rs.2,50,000/- each to claimants 2 and 3, they being daughters of deceased with proportionate costs and interest.

54. On such deposit of the compensation, the 1st claimant is permitted to withdraw Rs.4,00,000/- and claimants 2 and 3 are permitted to withdraw Rs.1,50,000/- each and the remaining amount of compensation shall be kept in a fixed deposit in any nationalized bank.

55. The claimants are directed to pay deficit court fee on the amount awarded exceeding the claim amount within fifteen days.

56. Advocate fee is fixed at Rs.2,500/-.

57. Consequently, miscellaneous petitions pending, if any, in these appeals shall stand closed.

JUSTICE N.BALAYOGI

November, 2017

Note : Mark L.R. copies.

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