

HON' BLE SRI JUSTICE G. SHYAM PRASAD

MA CMA Nos.748 of 2010 & 138 of 2011

COMMON JUDGMENT:

Original Petition No.1007 of 2007 was filed by the claimants against the APSRTC claiming compensation of Rs.5,00,000/- on account of the death of the deceased in a motor vehicle accident.

2. The Tribunal passed award granting compensation of Rs.3,80,000/- against APSRTC.

3. Aggrieved by the award passed in the above O.P. two appeals are filed. MACMA No.748 of 2010 is filed by the claimants for enhancement of the compensation and MACMA No.138 of 2011 is filed by the respondent-APSRTC, challenging the liability, and questioning the excessive compensation.

4. Heard Sri Kasireddy Jagathpal Reddy, learned counsel for the appellants/ claimants and Sri Kambham Madhva Reddy, standing counsel for respondent-APSRTC.

5. Brief averments of the petition filed before the Tribunal are that one Abdul Kalam, son of petitioners 1 and 2 and brother of petitioners 3 and 4, died in a motor vehicle accident.

6. The accident occurred on the intervening night of 15/ 16.01.2007 at about 01.00 hours. On that day, deceased boarded a bus bearing No.AP 10 Z 3885 and proceeding from Panjagutta towards Kongkothi, and the bus reached near ICICI bus stop, Khairatabad. The driver of the bus has slowed down the bus and suddenly raised speed, where the passengers wanted to get down at ICICI bus stop. Then the passengers pushed the deceased and he fell down from the bus, and the

rear wheel of the bus ran over him. He shifted to Osmania General Hospital, where the doctors declared him dead. The police Saifabad, registered a case against the driver of the bus, in Cr.No.29 of 2007 for the offence punishable under Section 304-A IPC. The deceased was working as a cook in 'Abhiruchi Chinese Fast Food Centre,' Panjagutta, Hyderabad and earning Rs.10,000/- per month, apart from food and tiffins, and other income by way of batta etc.

7. The respondent-APSRTC filed counter denying the manner in which the accident has occurred, and alleged that the passengers, who pushed the deceased from the bus, are responsible for the death of the deceased. There is negligence on their part, and not on the part of the driver of the bus. It is alleged that non-joinder of necessary parties is fatal and the claim is liable to be dismissed. It is also alleged that the compensation claimed by the claimants is highly excessive.

8. The Tribunal on consideration of the evidence on record, awarded compensation of Rs.3,80,000/- as against the claim of Rs.5,00,000/- made by the claimants.

9. The claimants, having dissatisfied with the quantum of compensation awarded by the Tribunal, filed MA CMA No.748 of 2010, whereas, the APSRTC also filed appeal in MA CMA No.138 of 2011, questioning liability and also excessive quantum of compensation awarded by the Tribunal.

10. It is contended on behalf of APSRTC that there was no negligence on the part of the driver of the RTC bus, as there was no bus stop at the place of accident, the driver did not stop the bus at that place. Some of the passengers intended to get down from the bus, when

the bus was slow down and they pushed down the deceased, as a result of which, the deceased fell down and sustained injuries.

11. It is further contended that there was negligence on the part of the passengers and the deceased, as the passengers have pushed the deceased when the bus was running. It is contended that the Tribunal without considering the evidence on record, has fixed the liability only against the driver of the bus, therefore, the Corporation is not liable to pay any compensation to the claimants.

12. Argument of claimants: Learned counsel for the claimants submits that the Tribunal has clearly held that there was negligence on the part of the driver of the bus. It is contended that PW.2 was an eye witness to the accident, and he stated that on the date of accident himself and the deceased boarded the RTC bus at Panjagutta, and when the bus had reached near ICICI bus stop, at Khairatabad at about 1 a.m., the driver of the bus had slowed down the bus, and raised speed and moved the bus. At that time, the passengers, who wanted to get down from the bus, pushed the deceased and he fell down on the road, the rear wheel of the bus ran over him. It is contended that the Tribunal has not placed reliance on the evidence of PW.2 and considering the documents Ex.A.1 certified copy of FIR in Cr.No.29 of 2007 of Saifabad PS, Ex.A.2 certified copy of the complaint given by of Abdul Latheef and Ex.A.3 the certified copy of the inquest report, and the inquest report, whereby the mediators opined that the deceased died due to involvement of RTC bus bearing No.AP 10 Z 3885, the Tribunal came to the conclusion that as the driver of the bus did not stop the bus at ICICI bus stop, and slow down the bus, and picked up speed, the passengers who intended to get down from the bus, pushed the deceased down in a

hurry to get down from the bus, due to that the deceased fell down on the road and died.

13. In fact, the observation of the Tribunal with regard to rash and negligent act on the part of the driver of the bus, clearly indicates that the driver of the RTC bus alone was responsible for the said accident and none else. If the driver had stopped the bus at the bus stop, the passengers would have got down from the bus, and the accident could not have occurred.

14. In fact, the negligence on the part of the driver of the RTC bus is clearly proved, as such there is no force in the contention raised by the learned standing counsel for the RTC. Therefore, the findings of the Tribunal that the accident occurred only due to the rash and negligent driving of the driver of the bus, is proved. Therefore, I do not see any valid reason to set aside the said finding.

15. Quantum: Learned standing counsel for the Corporation submitted that the quantum of compensation awarded by the Tribunal is highly excessive. Whereas, learned counsel for the claimants submitted that the quantum of compensation awarded by the Tribunal is inadequate.

16. The learned counsel for the claimants placed reliance on various decisions of the Supreme Court and the High Court, for enhancement of the compensation.

17. Learned counsel for the claimants submitted that the deceased was working as a cook in famous restaurant and was drawing salary of Rs.10,000/- per month and he has future prospects to get more income, but the Tribunal has not considered the future prospects of the

deceased as a cook. He placed reliance on the decision of the Apex court in '*Chanderi Devi vs. Jaspal Singh*¹', with regard to the income of a cook. In the said decision, the apex Court found that the income of the deceased as a cook can be taken at Rs.15,000/- per month.

18. In fact in that case, there was documentary proof of his income, whereas, in the present case, there is no documentary proof for the income of the deceased. Therefore, the above decision is not applicable to the facts of the present case.

19. Learned counsel further contends that the claimants are entitled for compensation under the head of future prospects of the deceased.

20. In support of his contention, he placed reliance upon a decision of the Apex Court in '*Syed Sadiq & others vs. Divisional Manager, United India Insurance Company Ltd.*',², wherein the apex court awarded 50% increment with regard to future prospects of income to a vegetable vendor. Learned counsel contended that in '*Ramachandrappa vs. Royal Sundaram Alliance Insurance Company Ltd.*',³ the Apex court has taken the minimum income of a coolie was at Rs.4500/- per month. He has also relied on a decision of the Apex court in '*Muna Lal Jain and another vs. Vipin Kumar Sharma & others*'⁴, wherein the apex court has held that in case of death of a bachelor, the future prospects of the deceased can be taken at 50% of income. He has also relied on a decision of the Apex Court in '*Rajesh & others vs. Rajbir Singh & others*'⁵, wherein the apex court has considered awarding of a just, equitable, fair and reasonable compensation, and in '*Santosh Devi Vs. National Insurance Company*

¹ (2015) 11 SCC 703

² (2014) 2 SCC 735

³ 2011 ACJ 2436

⁴ 2015 ACJ 1985

⁵ 2013 ACJ 1403

Ltd.,⁶ the apex court held that the future prospects of a self-employed person should be taken at 30% of the actual income in case of death.

21. Learned counsel for the claimants cited catena of decisions on the point of future prospects to be more than 50% of the income of the deceased, to be taken for the purpose of calculation of compensation towards loss of dependency.

22. No doubt, in all these decisions, the future prospects were ordered to be taken between 30% to 50%. In the instant case, the deceased was a cook which was not a permanent employment, for taking future prospects basing on the increase in the salary. There won't be any guarantee in a private organization for his continuance in the job. The deceased was said to be working in a private hotel, therefore, in this case, it is not appropriate to grant future prospectus.

23. On consideration of the evidence on record and the judgment of the Tribunal, it is obvious that the Tribunal has considered all these aspects and awarded adequate compensation in this case. Therefore, I do not see any merit in the two appeals, to interfere with the award passed by the Tribunal.

24. In the result, both the appeals are dismissed. No order as to costs. Miscellaneous petitions pending if any in both the appeals, shall stand closed.

G. SHYAM PRASAD, J

Date: 23.02.2017.
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⁶ (2012) 6 SCC 421