THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 467 of 2010

JUDGMENT:

This appeal is arising out of the order and decree dated 01.12.2009 passed in O.P.No.1417 of 2001 by the Motor Accidents Claims Tribunal (I Additional District Judge) at Nizamabad.

2. Brief facts of the case are that on 25.08.2000, while the deceased was driving his auto rickshaw, carrying passengers and when the auto reached near Gundaram crossing at Jannepally road, one RTC bus bearing No.AP 9Z 8789 came at a high speed in opposite direction and dashed against the autorickshaw. As a result, the deceased died. The claimants, who are the legal representatives of the deceased alleged that the accident occurred due to rash and negligent driving of the driver of the bus, and filed the claim petition under Section 166(1)(c) of the Motor Vehicles Act, 1988, claiming compensation of Rs.5,00,000/- on account of the death of the deceased.

3. The respondent-APSRTC filed counter denying the allegations in the claim petition.

4. The Tribunal, on consideration of evidence of PWs.1 and 2, and RW1, and the documents Exs.A1 to A3, has awarded compensation of Rs.4,95,800/- with proportionate costs and interest at 9% per annum against the respondent-APSRTC.

5. Heard the arguments of learned counsel for the appellants-APSRTC, and the respondents-claimants.

6. It is contended on behalf of the appellants-RTC that it is a case of head-on collision, and therefore there is negligence on the part of the drivers of both the vehicles, but the Tribunal has erroneously fixed the liability only against the driver of RTC bus. Therefore, the findings of the Tribunal are liable to be set aside in that regard.

7. It is contended on behalf of the respondents that the Tribunal has considered the evidence of eyewitness PW2 and the documents Exs.A1 to A3, and came to a conclusion that the accident occurred due to the rash and negligent driving of the driver of RTC bus. The counsel referred to the evidence of PW2, who was an eyewitness to the accident, and argued that PW2's testimony reveals that the accident occurred due to the rash and negligent driving of the driver of the RTC bus.

8. It is revealed in the cross examination of PW2 that he was traveling in the backseat of the auto rickshaw at the time of accident. It clearly indicates that he was an eyewitness to the accident and his evidence reveals that the accident occurred due to rash and negligent driving by the driver of RTC bus. In this regard, the evidence of RW1-driver of the RTC bus appears to be a self-serving statement. His evidence only reveals that there were 12 passengers in the auto rickshaw at the time of accident and the accident occurred due to overloading of the auto. It is not the plea of the insurer that overloading of the auto rickshaw caused inconvenience for the driver of the auto and led to the accident. Since there is no such plea by the insurer in that regard, negligence cannot be attributed to the driver of the auto. It is obvious from the evidence of RW1 that 5 persons died in the accident and 4 persons sustained injuries. It is also pertinent to note that the police

registered a case against the driver of the RTC bus. The Tribunal, on considering the evidence of the witnesses PWs.1 and 2, and RW1, and the documents Exs.A1 to A3, has rightly concluded that there is no contributory negligence on the part of the driver of the auto rickshaw.

9. Learned counsel for the appellantss-RTC contended that the compensation as well as the rate interest awarded by the Tribunal are highly excessive. It is further contended that the Tribunal has taken the income of the deceased at Rs.3,000/- per month, without there being any proof, and the Tribunal has deducted 1/5th from his income towards his personal expenditure, which is not the norm fixed as per earlier decisions. It is further submitted that the 7th claimant died during the pendency of the appeal, as per the information in the memorandum filed by the claimants, and therefore, deduction of 1/5th towards personal expenditure may be corrected as 1/4th.

10. Per contra, learned counsel for the respondents-claimants contended that the notional income of the deceased can be taken into consideration as Rs.3,000/- per month and, therefore, the Tribunal has correctly taken the income of the deceased as Rs.3,000/- per month and awarded adequate compensation. It is further submitted that the legal heirs of the deceased were seven in number and, therefore, deduction of 1/5th towards personal expenditure of the deceased is reasonable and the said ratio was laid down in the case of Sarla Verma v. Delhi Transport Corporation[1].

11. Insofar as the income of the deceased is concerned, as per the ratio laid down by the Apex Court in Ramesh Singh v. Satbir

[1] (2009) 6 SCC 121

Singh[2], New India Assurance Company Ltd. v. Smt. Shanti Pathak[3], Oriental Insurance Co. Ltd. v. Syed Ibrahim[4], New India Assurance Co. Ltd., v. Kalpana (Smt)[5], a decision of High Court of Karnataka at Bangalore in Sri Appayachari v. K. Vadivel and the New India Assurance Company Ltd., rep. by its Manager[6], and a decision of High Court of Calcutta in United India Insurance Co. Ltd. v. Shri Buro Mahara[7], the notional income of the deceased can be taken as Rs.3,000/- per month, and therefore, I do not see any reason to interfere with the aspect of taking the notional income of the deceased at Rs.3,000/- per month.

12. Insofar as deduction towards personal expenditure is concerned, it is pertinent to note that by the date of filing of the original petition before the Tribunal and even by the date of filing appeal before this Court, claimant No.7 was alive, and he died during the pendency of appeal. The death of one of the claimants during pendency of appeal does not alter the quantum of personal expenditure of deceased, as the claimant No.7 died subsequent to the death of the deceased. Therefore, there cannot be any modification in the quantum of personal expenditure of the deceased, when one of the claimants died subsequently i.e., during the pendency of the appeal. Therefore, I do not see any valid grounds to interfere with the award passed by the Tribunal taking into consideration the deduction of 1/5th towards personal expenditure of the deceased while calculating the loss of dependency.

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[2] MANU/SC/7089/2008
[3] MANU/SC/7776/2007
[4] MANU/SC/7915/2007
[5] (2007) 3 SCC 538
[6] MANU/KA/3721/2013
[7] MANU/WB/0139/2015

13. It is lastly contended by the learned counsel for the appellants that the rate of interest awarded by the Tribunal at 9% per annum is excessive and requested to reduce the same.

14. Per contra, learned counsel for the respondents submits that the rate of interest at 9% is reasonable.

15. As far as the contention with regard to rate of interest is concerned, keeping in view the ratio laid down by the Hon'ble Supreme Court in the case of Dharampal v. U.P. State Road Transport Corporation[8], the rate of interest is reduced to 7.5% per annum from the date of petition till realisation.

16. In the result, the appeal is partly allowed, by reducing the rate of interest from 9% to 7.5% per annum from the date of petition till realization. Rest of the award passed by the Tribunal shall remain intact. No costs. Miscellaneous petitions, if any pending, shall stand closed.

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GUDISEVA SHYAM PRASAD, J

04th April, 2017

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[8] 2008 ACJ 2041

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