THE HON'BLE SRI JUSTICE N.BALAYOGI

M.A. C.M.A. No.1543 of 2010

JUDGMENT :

In spite of listing the matter under the caption "Final Hearing", none appeared for the respondent and there is no representation on its behalf. Already heard the appellants. Hence, judgement is being pronounced.

2. The appellants/claimants aggrieved by the Award and Decree dated 28.07.2010 in O.P. No.452 of 2007 on the file of the Motor Accident Claims Tribunal-cum-III Additional District Judge (Fast Track Court), Mahabubnagar at Gadwal, preferred this appeal besides other grounds on the ground that the tribunal erred in concluding that the notional income of the deceased was only 15,000/- per annum which is very low even to the minimum wage for the manual labourer. Even though under Ex.A.8 the President of the Toddy Tappers' Cooperative Society certified that the deceased was getting an amount of Rs.4,000/- per month, the same was rejected by the tribunal. The deceased was 45 years old at the time of accident which was not considered by the Tribunal. It is further contended that the tribunal erred in awarding an amount of Rs.5,000/- towards pain and suffering.

3. After hearing the appellants, though the matter is posted to this day for hearing the respondent, none appeared on behalf of the respondent and advanced arguments.

4. The claim of the appellants, in brief, is as follows:-

On 25.7.2006, in the evening while the deceased was proceeding on his Bajaj Chetak Scooter bearing No.AP22-4045 from Gadwal towards Mulkalpally, at about 4.45p.m., when he reached near Krishnaveni Chowk in front of Bajaj showroom, RTC bus bearing No.AP11Z-29 driven by its driver in a rash and negligent manner dashed the deceased resulting his death on the spot. At the time of accident, the deceased was hale and healthy, aged about 45 years and was earning an amount of Rs.6,000/- per month by doing toddy tapping business. Appellant No.1 is the wife, 2 and 3 are unmarried daughters and appellant No.4 is the son of the deceased.

5. The respondent filed counter and additional counter alleging that the deceased drove the Bajaj Chetak in high speed, rash and negligent manner, came across the road and dashed the bus and that there was no negligence on the part of the driver of the RTC bus.

6. The tribunal having considered the pleadings, settled the following issues for trial:

(1) Whether the accident in issue resulted due to the rash and negligent act of the driver of the crime vehicle? If so, whether the deceased died due to the said accident?

(2). Whether the petitioners are entitled to claim compensation and from whom and what amount? and

(3) To what relief?

7. To prove the claim, on behalf of appellants/claimants, PWs.1 and 2 were examined and Ex.A1 to A8 are marked. On behalf of respondent, no oral or documentary evidence is adduced.

8. In support of the claim, the claimant No.1 was examined as P.W.1 and to prove rash and negligent driving on the part of the driver of the offending bus, eyewitness to the accident was examined as P.W.2. P.W.1 stated that on 25.7.2006 while the deceased was proceeding in front of Bajaj Showroom, Gadwal at 4.45 pm, the driver of the offending bus drove the bus in rash and negligent manner and dashed against the deceased. However, during the cross-examination, she admitted that she has not witnessed the accident. Hence, her evidence is of no use for consideration regarding rash and negligent driving and the manner in which the accident took place. Necessarily we have to rely on the evidence of P.W.2, who is a direct eyewitness to the accident. P.W.2 in chief-examination clearly stated that on the date of accident, in the evening at Bheemnagar locality, he observed the deceased proceeding on his scooter from Gadwal towards Mulkalpally and when he reached in front of Bajaj showroom, the driver of the RTC bus bearing No.AP11Z-29 came in a rash and negligent manner and dashed against the deceased, who is his brother, and as a result, the deceased died on the spot. Though he was cross-examined at length, the defence could able to establish that he is the complainant in Ex.A.1-Crime No.73 of 2006. He was cited as first witness and complainant in Ex.A.2-charge sheet. He denied the suggestion that he was not direct eyewitness to the accident. The complainant in Ex.A.1-FIR and the investigating officer in Ex.A.2-charge sheet specifically stated that the accident was due to rash and negligent driving of the driver of the RTC bus.

9. To test the veracity of PW2, during the cross-examination, a suggestion was put to him that he was shown as complainant in Crime No.73/2006 and not as a witness to the incident. He denied the suggestion

that he is not the eyewitness to the incident and that there is no negligence on the part of the driver of the RTC bus. Except the suggestion to PW2, absolutely no oral or documentary evidence was produced by the respondent to prove that PW2 is not the eye witness to the incident. In Ex.A1 it is specifically asserted that PW2 is the complainant and in Ex.A2-charge sheet, he is cited as a witness and complainant. It is the specific evidence of P.W.2 that the accident was occurred while he was proceeding on the road. Nothing is suggested to prove or discard the evidence of P.W.2. Therefore, the tribunal rightly held that P.W.2 is the eyewitness to the accident.

10. The respondent having taken the plea that there is negligence on the part of the deceased himself, did not choose to produce any oral evidence. The driver, conductor and the passengers of the offending bus are the proper persons to speak about the manner of the accident. In the counter, the plea of the respondent is that the passengers informed that the accident was due to rash and negligent driving of the deceased himself, but for the reasons best known to the respondent, no passenger was examined to prove the same. It is not the case of the respondent that the driver and conductor of the offending bus are not available or it is impossible to secure their presence. They are under the administrative control of the respondent. The respondent having taken the plea of negligence on the part of the deceased, failed to produce any convincing evidence to prove the same.

11. In the absence of any such rebuttal evidence, the tribunal considered the ocular evidence of P.W.2 supported by Exs.A.1 and A.2 and A5, which is the report of Motor Vehicle Inspector, who stated that the accident is not due to any mechanical defect, and rightly came to the conclusion that the

accident was occurred due to rash and negligent driving of the RTC bus by its driver, and such finding does not warrant any interference by this Court.

12. The consistent evidence of PW1 and 2 is that the deceased G. Narayana Goud was hale and healthy and he was aged about 45 years at the time of death. He was doing toddy business and also tapping toddy and used to earn an amount of Rs.6,000/- per month excluding all expenses. PW1 also stated that the deceased used to cultivate the land and earn an amount of Rs.50,000/- per annum. P.W.2 corroborated the evidence of P.W.1 that the deceased was aged 45 years and member of toddy tapper's cooperative society and used to earn Rs.6,000/- per month apart from cultivating the land. To substantiate that the deceased is a toddy tapper, the claimants filed Exs.A7-copy of certificate issued by Circle Inspector, Excise, Gadwal and A8-endorsement of President, Toddy Tappers, Cooperative Society, Malkapally. In the certificate-Ex.A.7, the Prohibition and Excise Inspector certified that the deceased (G. Narayana Goud) was Toddy Tapper and member of Toddy Tappers' Co-operative Society, Mulkapally of Gadwal Mandal. His TCS license was cancelled on 13.8.2002 and new license was issued by Toddy Tappers' Co-operative Society, Mulkapally vide license No.G622007-08, date:7-11-2007. Further, Ex.A.8 is the certificate issued by the President of Toddy Tappers' Co-operative Society, Mulkapally of Gadwal Mandal, wherein, he certified that the deceased was a member of the Toddy Tappers' Association and used to earn an amount of Rs.4,000/- per month towards salary and besides that, he used to receive Rs.10/- out of Rs.100/- towards his share in profit. Under the certificate Ex.A8, the President of Toddy Tappers' Cooperative Society certified that the deceased was receiving Rs.4,000/- towards salary per month. The

tribunal observed that Ex.A.8 is silent as to who was paying Rs.4,000/- per month to the deceased and that no receipt was filed to show that the deceased was receiving Rs.4,000/- towards his salary and holding so, the tribunal came to the conclusion that it is unsafe to hold that the deceased was earning Rs.6,000/- per month basing on Exs.A.6 to A.8. Such a finding of the tribunal is perverse. The evidence of PWs.1 and 2 and the documentary evidence under Exs.A.7 & A.8 is not rebutted by the respondent by entering into witness box. In the absence of such rebuttal evidence, the findings of the tribunal that it is unsafe to come to the conclusion that the deceased G.Narayana Goud was earning Rs.6,000/- basing on Ex.6 to Ex.A8 and its opinion that notional income of the deceased per annum has to be fixed is perverse, without any basis and liable to be set aside.

13. Under the above facts and circumstances and reasons stated, I am of the considered view that there is nothing to discard Ex.7 and Ex.A8, particularly in the absence of any rebuttal evidence produced by the respondent. Furthermore Exs.A7 and A8 are supported by the evidence of PW1 and PW2 which is well established that the deceased was a member of Toddy Tappers' Society, Malkalpally, Gadwal and he was receiving Rs.4,000/- monthly towards salary by the Society besides his share in the profits. Hence, it can be safely concluded that the deceased was receiving a sum of Rs.4,000/- per month towards salary. He was 45 years by the date of the accident. Having considered the age of the deceased as 45 years, the relevant multiplier applicable in this case is '14' as per **Sarla Verma and Others v. Delhi Transport Corporation & Another**[1].

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[1] (AIR 2009 SC 3104)

14. The claimants are four in number. Appellant No.1 is the wife and appellant Nos.2 to 4 are unmarried daughters and son of the deceased G. Narayana Goud. Since the deceased was toddy tapper, aged about 45 years and the appellants are dependents, relying on the decision in **Sarla Verma and Others** (1 supra), since the appellants/claimants are four in number, 1/4th has to be deduced towards the expenditure of the deceased had he been alive. The annual income of the deceased is 48,000/- (Rs.4,000/- x 12), after deducting 1/4th therefrom, the annual income to the family of deceased comes to Rs.36,000/- and by applying the multiplier '14', the loss of dependency comes to Rs.5,04,000/- (Rs.36,000 x 14). That apart, the appellants/claimants are entitled to Rs.2,000/- towards funeral expenses; Rs.15,000/- towards consortium to the first appellant; and Rs.5,000/- towards pain and suffering, as awarded by the tribunal.

15. Thus in all, the appellants would be entitled to the compensation of Rs.5,26,000/- (Rs.5,04,000/- + Rs.2,000/- + Rs.15,000/- + Rs.5,000/-). But, as the claim of the appellants/claimants is only Rs.5,00,000/-, the award is restricted to Rs.5,00,000/- only.

16. In the result, the appeal is allowed modifying the award and enhancing the compensation awarded by the Tribunal from Rs.1,47,000/- to Rs.5,00,000/- with proportionate costs and interest at 7.5% per annum from the date of the petition i.e., 21.08.2007 till realization against the respondent. The compensation amount of Rs.5,00,000/- is apportioned among the appellants as Rs.2,00,000/- to the appellant/claimant No.1 and Rs.1,00,000/- each, to the appellant/claimant Nos.2 to 4.

The respondent is directed to deposit the above amount, after deducting the amount already deposited/paid, if any, within thirty days from the date of receipt of a copy of this order.

On such deposit, the appellants are permitted to withdraw their share of amount. 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

08th November, 2017

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