

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A.No.2162 of 2011

JUDGMENT:

This appeal is arising out of the Judgment and Decree, dated 29.06.2009, in M.V.O.P.No.402 of 2007, on the file of Additional Motor Accident Claims Tribunal-cum-Family Court, Nellore.

2. The appellants are the claimants, who are wife and daughters of the deceased Venkateswarlu, who died in a motor vehicle accident, which occurred on 10.01.2007 while he was proceeding on his motorcycle bearing No.AP 2E 6326 along with his friend from Dakkili to Venkatagiri and at about 8.40 p.m., when they reached near Ramalingeswaraswamy temple in Venkatagiri town, the offending RTC bus bearing No.AP 10Z 6825 being driven by its driver in a rash and negligent manner came in opposite direction and dashed the motorcycle. As a result of which the deceased and his friend fell down on the road and sustained grievous injuries. Immediately, after the accident, the injured were taken to Government Hospital, Venkatagiri and from there, the deceased was shifted to Ruya Hospital, Tirupati, for better treatment and while he was undergoing treatment, he succumbed to the injuries at 9.20 a.m. on 11.01.2007 and after postmortem was conducted on the dead body, the same was brought back to the village in a car for cremation. The Station House Officer, Venkatagiri Police Station, registered a case in Crime No.7 of 2007 against the driver of offending vehicle.

3. The respondent filed counter denying the material allegations made in the petition and disputed the manner of

accident, the age, income and avocation of the deceased, his relationship with the appellants, etc. It is averred that the driver of the offending bus was not rash or negligent in driving the same, whereas the rider of the motorcycle was rash in riding the same and due to his negligence the accident occurred. Since the riders of the motorcycle were under the influence of alcohol, they lost control over the motorcycle and fell on the road and sustained injuries. The driver of the bus, after accident, got down from the same and shifted the injured to the Government Hospital in an auto and that the owner and insurer of the motorcycle are liable for the accident and they are the necessary parties in the claim petition as they were not made as parties to the case, the petition is bad in law for non-joinder of necessary parties and that the claim of the petitioners is exorbitant and as the driver of offending bus was not the cause for the accident, the petition merits no consideration and is liable to be dismissed.

4. The Tribunal, on consideration of the evidence of the witnesses P.Ws.1 & 2 and the documents Ex.A-1 to A-4 and the evidence of R.W.1 and Ex.B-1, has awarded compensation of Rs.2,00,000/- with proportionate costs and interest at 7.5% per annum on account of the death of the deceased in a motor vehicle accident holding that the respondent is liable to pay the compensation. Aggrieved by the quantum of compensation, the claimants filed this appeal against the respondent APSRTC for enhancement of compensation.

5. Heard the arguments of Sri K. Gopal, learned counsel for the appellants and Sri Amara Rama Rao, learned Standing Counsel for the respondent – APSRTC.

6. The point for consideration in this appeal is – ***Whether the appellants-claimants are entitled to enhancement of compensation?***

7. Learned counsel for the appellants-claimants contended that the deceased was earning Rs.5,000/- per month by the date of accident, but the Tribunal has taken into consideration only Rs.15,000/- per annum. Therefore, the Tribunal has not taken the correct earnings of the deceased.

8. It is appropriate to refer to the findings of the Tribunal with regard to the calculation of loss of earnings at this juncture. The Tribunal has taken a sum of Rs.15,000/- per annum as the appellants could not produce any proof for the income of the deceased.

9. Learned Standing Counsel for respondent-APSRTC submitted that the Tribunal has awarded adequate compensation, and the same does not require any interference.

10. Admittedly, the deceased Venkateswarlu was a labourer by profession. It is very difficult to secure documentary proof for the workers working in an unorganized sector. Therefore, the notional income of the worker is to be taken into consideration for the purpose of calculation of loss of earnings. The Tribunal has taken only Rs.15,000/- per annum, instead of Rs.3,000/- per month, since Rs.3,000/- per month is the minimum income of the

deceased, as he was a worker working in an unorganized sector and Rs.36,000/- per annum.

11. Therefore, taking the notional income of the deceased, who was working as a labourer, at Rs.3,000/- per month, his notional annual income would come to Rs.36,000/-. As the deceased was 35 years old by the date of accident, the appropriate multiplier applicable to the age of the deceased as per **Sarla Verma v. Delhi Transport Corporation**¹ is 16. The family of the deceased is consisting of three members and, therefore, 1/3rd of Rs.36,000/- (Rs.12,000/-) is to be deducted towards personal living expenses of the deceased. The annual income of the deceased after deducting 1/3rd of the amount towards his personal expenses come to Rs.24,000/- (Rs.36,000 – Rs.12,000) and after application of the multiplier of 16, the future earnings of the deceased would be to the tune of Rs.3,84,000/- (Rs.24,000 x 16 = Rs.3,84,000/-). The appellants are entitled for conventional charges of Rs.50,000/- under various heads of pecuniary and non-pecuniary damages like consortium, loss of estate, funeral expenses.

12. Therefore, on consideration of the evidence on record and keeping in view the ratio laid down by the Hon'ble Supreme Court in the case of **Reshma Kumari v. Madan Mohan**², and **Nagappa v. Gurudayal Singh**³, the appellants are entitled to just and reasonable compensation, as shown in the tabular format.

¹ (2009) 6 SCC 121

² 2013 ACJ 1253 = (2009) 13 SCC 422

³ AIR 2003 SC 674

Head	Compensation awarded by the Tribunal	Compensation enhanced
Compensation for transport expenses and medical expenses	Rs.10,000/-	-
Compensation for loss of income of the deceased	Rs.1,60,000/-	Rs.3,84,000/-
Compensation for loss of consortium to the 1 st claimant	Rs.5,000/-	Conventional Charges Rs.50,000/-
Compensation for loss of estate of the deceased	Rs.20,000/-	
Funeral expenses	Rs.5,000/-	
Total	Rs.2,00,000/-	Rs.4,34,000/-

13. In the result, the appeal is allowed, by modifying the award passed by the Tribunal, enhancing the compensation from Rs.2,00,000/- to Rs.4,34,000/- with proportionate costs and interest at 7.5% per annum from the date of petition till realisation. The appellants are directed to pay the Court Fee for the amount awarded over and above the original claim, within two (2) months from the date of receipt of a copy of this order. The respondent-APSRTC is directed to deposit the amount within two (2) months from the date of receipt of a copy of this order. On such deposit, the appellants are permitted to withdraw the entire compensation amount.

No costs. Miscellaneous petitions, if any pending shall stand closed.

GUDISEVA SHYAM PRASAD, J

Date: 20th April, 2017

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