

THE HON'BLE MR JUSTICE N.BALAYOGI

MACMA NO.2183 OF 2009

JUDGMENT:

The appellants/claimants, aggrieved by the Award and decree dated 13.07.2007 in M.V.O.P.No.252 of 2005 on the file of Motor Accident Claims Tribunal-cum-I Additional Chief Judge, City Civil Court, Secunderabad, preferred this appeal on the following among other grounds that the Tribunal should have taken the loss of dependency at Rs.3,000/-per month applying multiplier '13' to award compensation. Further, the Tribunal should have granted minimum amount of Rs.50,000/- towards loss of consortium.

2. On the other hand, the respondent/APSRTC contends that the Tribunal having considered the oral and documentary evidence, awarded just and reasonable compensation, which does not suffer from any legal infirmities warranting interference of this Court.

3. Before the Tribunal, to prove the claim, the claimants examined PWs.1 and 2 and marked Exs.A.1 to A.5. No witnesses were examined and no documents were marked on behalf of the respondent.

4. The Tribunal having considered the corroborative evidence of PW.2 and documentary evidence under Exs.A1, A2 and A5, came to the conclusion that PW.2 is a material eye witness, who was cited as 5th witness in Ex.A.2-charge sheet. The complainant in Ex.A.1-FIR specifically asserted the involvement of APSRTC bus bearing No.AP 10 Z 6295 in the accident and the same was not disputed by the respondent.

5. The consist evidence of PW.2 is that on 18.07.2005 at about 05.30 PM while he was proceeding from New Bowenpally Bus stop towards

Pension Lane, the deceased Nafeez Begum was also proceeding in the same direction towards Pension Lane on the extreme left side of the road. In the meanwhile, RTC bus came from the back side with high speed in rash and negligent manner, and dashed the deceased.

6. The Investigating Officer after thorough investigation filed charge sheet under Ex.A.2, alleging that the accident occurred due to rash and negligent driving of the driver of the RTC bus. The Motor Vehicle Inspector, who inspected the vehicle issued Ex.A.5 report opinion that the accident was not due to any mechanical defects of the vehicle.

7. The Tribunal after elaborate discussion of the evidence of PWs.1 and 2 and having considered Exs.A1, A2, A5 and opinion of the Inquest Officer under Ex.A3-inquest report, came to the conclusion that the accident occurred due to rash and negligent driving of the driver of the RTC bus bearing No.AP 10Z 6295. The respondent did not challenge the finding of the Tribunal by filing any cross appeal.

8. With regard to the age, occupation and income of the deceased, admittedly there is no documentary evidence except the evidence of PW.1. In Ex.A.1-FIR, Ex.A.2-charge sheet, Ex.A.3-Inquest Report and Ex.A.4-postmortem report, the age of the deceased was noted as 46 years. Accordingly, the Tribunal considered the age of the deceased as 46 years.

9. The deceased was admittedly housewife as per the evidence of PW.1 and that the deceased has no other source of income and that she is attending household works like cooking food, taking care of everything at home and thereby her services to the family were taken at Rs.3,000/-

per month. The respondent did not adduce any rebuttal evidence with regard to the age and income of the deceased.

10. In **Lata Wadhwa and others v State of Bihar and others**¹ the Apex Court held that award of compensation based on financial loss which in turn was based on prospective loss of earnings. It was further held that in case of housewives aged 34 to 59 years, who are active in life the annual contribution would be Rs.36,000/-.

11. In **Sarala Verma (SMT) and others v Delhi Transport Corporation and another**² the Apex Court held that the annual contribution to the family (multiplicand) when multiplied by such multiplier gives the 'loss of dependency' to the family. Thereafter, a conventional amount in the range of Rs.5,000/- to Rs.10,000/- may be added as loss of estate. Where the deceased is survived by his widow, another conventional amount in the range of Rs.5,000/- to Rs.10,000/- should be added under the head of loss of consortium. But no amount is to be awarded under the head of pain, suffering or hardship caused to the legal heirs of the deceased.

12. With regard to the deductions to be made towards personal and living expenses, the Supreme Court held that it has to be calculated on the basis of units indicated in **UPSRTC v Trilok Chandra**³, a general practice is to apply standardized deductions. Having considered several subsequent decisions of the Supreme Court, it opined that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third where the number of

¹ (2001) 8 SCC 197

² (2009) 6 SCC 121

³ (1996) 4 SCC 362 176

dependant family members is 2 to 3, one-fourth where the number of dependent family members is 4 to 6, and one-fifth where the number of dependent family members exceeds six.

13. The relevant multiplier to the age group 46 to 50 years is '13'. The age of the deceased was 46 years, who is housewife. The monthly income of the housewife is considered as Rs.3,000/- per month and the relevant multiplier as per **Sarala Verma (SMT) and others**'s case is '13'. Since the claimants are four in number, $1/4^{\text{th}}$ has to be deducted from out of the income of the deceased. Accordingly, taking into consideration, the annual income of the deceased as Rs.36,000/- and after deducting $\frac{1}{4}$ it comes to Rs.27,000/-. By applying multiplier '13', the loss of dependency would be Rs.27,000/- x 13 = Rs.3,51,000/-. Having taking into consideration the age of the husband of the deceased, who is 50 years, an amount of Rs.15,000/- towards consortium can be awarded. Besides that Rs.6,000/- towards loss of estate, Rs.10,000/- towards love and affection to the children, Rs.1500/- towards transportation and Rs.5,000/- towards funeral expenses is just and proper. In all, the claimants are entitled for compensation of Rs.3,51,000/- + Rs.15,000/- + Rs.6,000/- + Rs. 10,000/- + Rs.1500/- + Rs.5,000/- = Rs.4,00,000/-. The claimants are directed to pay difference of Court Fee if any.

14. In the result, the appeal is allowed modifying the award dated 13.07.2007 in M.V.O.P.No.252 of 2005 on the file of learned Chairman, Motor Accident Claims Tribunal-cum-I Additional Chief Judge, City Civil Court, Secunderabad modified to the extent indicated above with costs.

15. Consequently, APSRTC being the owner of the offending vehicle is liable to pay the compensation amount of Rs.4,00,000/- to the claimants, after deducting the amount if any, already paid or deposited, with bank interest at 7.5% per annum from the date of petition i.e. 22.08.2005 till the date of deposit, which shall be deposited within a period of 30 days from the date of receipt of a copy of this award.

16. Out of the said total compensation, Rs.1,75,000/- is apportioned to the 1st claimant, who is husband of the deceased and Rs.75,000/- each is apportioned to claimants 2 to 4, who are the children of the deceased. On such deposit, the claimants are permitted to withdraw the same.

17. The Advocate fee is fixed at Rs.2,000/-.

Miscellaneous petitions if any pending in this appeal shall stand dismissed. No costs.

Date: 07.07.2017
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N.BALAYOGI, J

