THE HON'BLE SRI JUSTICE N. BALAYOGI

<u>MACMA No.111 of 2009</u>

Date:24-04-2017

Between:

Shaik Tata Lakshmi and others.

... Petitioners.

And

LShaik Kalasha Vali and others.

... Respondents

THE HON'BLE SRI JUSTICE N. BALAYOGI

MACMA No.111 of 2009

JUDGMENT:

The appellants-claimants, aggrieved by the award of the Motor Accidents Claims Tribunal–cum-District Judge, Visakhapatnam, in MOP.No.1714 of 2006, dated 23-06-2008, preferred this appeal besides other grounds on the ground that the Tribunal has not considered Shaik Kareem died on the spot and awarded Rs.2,49,000/- as against the claim of Rs.10,00,000/-.

Further contended that the Tribunal ought to have considered that the deceased was earning Rs.10,000/- to Rs.12,000/- per month in Saudi Arabia and all the claimants are dependants on the deceased as there is no earning member and the award suffer from legal infirmities warranting interference.

Heard the learned counsel for the appellants-claimants and learned counsel for the respondents 2 & 3 - APSRTC.

The respondents 2 & 3 contended that the trial Court well considered both oral and documentary evidence came to the right conclusion and awarded just compensation and the award do not suffer from any legal infirmities warranting interference.

The appellants in MACMA No.111 of 2009 are the claimants in MOP No.1714 of 2006 who filed the petition for claiming compensation of Rs.10,00,000/- before the Motor Accidents Claims Tribunal-cum-District Judge at Visakhapatnam under Section 166 of the Motor Vehicles Act 1988 on account of the death of Shaik Kareem who was working as Kalasi at National Contracting Company Limited in Saudi Arabia earning from Rs.10,000/- to Rs.12,000/- per month who succumbed to injuries in the accident occurred on 13-09-2006 at 20:00 hours.

The main contention of the appellants-claimants is that the amount awarded is very meager and all the claimants are dependants on the income of the deceased and that none of them is earning member. Admittedly, P.W.1 is not an eye-witness to the accident. During cross-examination, she stated that her elder son gave a report and she came to know through him about the accident and death of her son. Ex.A1 is the copy of the F.I.R and Ex.A3 is the copy of the charge sheet. On 13-09-2006, at about 8:00 hours, the driver of the bus bearing No.A.P.9 Z 6036, drove the bus with high speed in a rash and negligent manner and dashed the deceased from his rare side, while he was going on motor cycle resulting which, the front wheel of the bus ran over the deceased and died instantaneously. There is no dispute about the involvement of the RTC bus bearing No.AP 9 Z 6036. P.W.2 is a direct witness to the accident whose evidence is that the APSRTC Bus bearing No.AP 9 Z 6036 came with high speed in a rash and negligent manner and dashed the motor cycle bearing No.AP 31 K 4903 due to which, the motor cycle was fell on the road and the front wheel of the bus ran over the head of the deceased causing at the instantaneous death. Though P.W.2 cross-examined at length could not elicit any information to suspect the evidence of P.W.2. More particularly in Ex.A1-FIR and Ex.A3-charge sheet, there is clear assertion of involvement of the RTC bus bearing No.A.P 9 Z 6036. The inquestdars under Ex.A2 also opined that the cause for the death of Shaik Kareem is due to the injures sustained in the accident involved in the RTC Bus bearing No.AP 9 Z 6036. The MVI under Ex.A4 opined that the accident is not due to any mechanical defects of the offending bus.

The driver and conductor of the RTC bus which involved in the accident are the relevant witnesses to speak about the manner and nature of the accident.

The driver and conductor are under the administrate control of the respondents 2 & 3. It is not their case that the driver and the conductor are not available. The respondents did not choose to examine the driver and conductor or at least other passengers in the offending bus to rebut the evidence of P.W.2. In such circumstances, the trial Court, having considered the evidence of P.W.2 supported by Exs.A1, A2, A3 & A4, find that the accident was due to rash and negligent driving of the driver of the RTC Bus.

The evidence of P.W.1 is that her son was 23 years, passed I.T.I and working as Kalasai in National Contracting Company Limited at Saudi Arabia and used to earn from Rs.10,000/- to Rs.12,000/- per month and utilized the same for his family benefit. During cross-examination, she stated that she do not now the name of the company in which the deceased working at Saudi Arabia.

The unimpeachable evidence of P.W.1 is that her son deceased-Shaik Kareem was hale and healthy having strong and good physic. He was 22 years and passed ITI as a Fitter and was working as a Kalasi in National Contracting Company Limited at Saudi Arabia and used to earn from Rs.10,000/- to Rs.12,000/- per month. To substantiate her evidence, she filed Ex.A6-attested Xerox copy of S.S.C certificate and Ex.A7-attested copy of provisional certificate of ITI.

A perusal of Exs.A6 & A7 goes to suggest that the deceased – Kareem Shaik passed SSC in the year 1999 in third division, wherein his date of birth was shown as 28-07-1984. Ex.A7 is the Provisional National Trading Certificate issued to the deceased according to which, he did ITI in the trade of Fitter in the year 2001, wherein also his date of birth of the deceased shown as 28-07-1984. There is no rebuttal evidence to the evidence of P.W.1 and except Exs.A6 & A7. The school certificate Ex.A6 is the material document to determine the age of the deceased, because at the time of admission in the school, nobody will except that he will met with an accident and die, to mention date of birth wrongly and gain wrongfully. In the absence of any rebuttal evidence produced by the respondents, I find that the evidence of P.W.1 supported by Exs.A6, A7 & A9 well established that the deceased was born on 28-07-1984 and the accident involved in RTC Bus bearing No.AP 9 Z 6036 was on 13-09-2006. Accordingly, he was 22 years one month 16 days by the date of death.

Further, the evidence of P.W.1 is that her deceased son used to work in National Contracting Company Limited at Saudi Arabia as a Kalasi and used to earn from Rs.10,000/- to Rs.12,000/- per month. Just before the date of accident i.e., on 13-09-2006, her son arrived India on leave. To substantiate the same, she stated that her son working in Saudi Arabia and also filed Ex.A9, the Xerox copy of the passport of the deceased, wherein the date of birth of the deceased was noted as 28-07-1984. As per Exs.A6, A7 & A9, the deceased was aged 22 years and odd. The passport shows the validity from 04-10-2002 to 03-10-2012, whereas the accident occurred on 13-09-2006 by which date, the passport of the deceased was having validity. Ex.A8 is the Service Certificate issued by the National Contracting Company Limited in favour of the deceased, wherein the passport number was mentioned in Ex.A9 as E 3707215 and certified that the deceased worked in their construction division as Kalasai in various projects sites from 22-07-2004 to 24-07-2006 and his performance was well in official assignments.

The salary slips under Ex.A11, eight in numbers goes to suggest that the remittances of foreign amount in foreign currency INR was Rs.10,000/- for the dates on 11-09-2004, 11-10-2004, 09-11-2004, 11-12-2004, 11-1-2005, 11-04-2005, 12-3-2005 & 11-5-2005 respectively. The pay slips under Ex.A11 suggest that the currency was remitted to the credit of Customer No.295-873581 with Canara Bank, Visakhapatnam, India to the beneficiary account of Andhra Bank, Visakhapatnam. The evidence of P.W.1 corroborated Exs.A10 & A11 goes to suggest that every month an amount of Rs.10,000/- used to be credited and the foreign currency was converted and remitted to the account of beneficiary every month at the rate of Rs.10,000/- during the period in which, he worked in Saudi Arabia at National Contracting Company Limited.

The consistent and unrebutted evidence of P.W.1 supported with Exs.A8 to A11 goes to suggest that the deceased used to work as a Kalasi in National Contracting Company Limited at Soudi Arabia and every month used to credit Rs.10,000/- foreign currency to the beneficiary account in India at Visakhapatnam.

In spite of such an unimpeachable evidence of P.W.1 and documentary evidence under Exs.A8 to A11, which clearly established that the deceased used to work as a Kalasi at National Contracting Company Limited and every month used to remit Rs.10,000/- to the beneficiary account for the maintenance of his parents, sister and brother, but the trial Court, even though none was examined on behalf of the respondents, came to the erroneous conclusions that the evidence with regard to the salary of the deceased was totally silent for the best reasons known to the employer. Further that all such remittances under Ex.A10-remittance slips cannot be said to be remittances made by the deceased or the earnings and there is no proof of income from the company. The further finding that whatever the remittances is only in Indian currency and whatever his earnings, there is in different currency is as no basis. The further finding is that merely because the deceased was sending some money for the family needs, it does not mean that all the money is meant for his family and it may be for the purpose of sending for himself which is of perverse and presumptions & assumptions without any rebuttal evidence.

The Tribunal, even though there is no rebuttal evidence to the consistent evidence of P.W.1 and Exs.A6 to A11, assessed the monthly income of the deceased at Rs.3,000/- per month as a Kalasi and there is nothing to show that he has got an offer of continuation of employment at Saudi Arabia. All these findings and reasons are baseless, which are not supported by any oral or documentary evidence. There is nothing suggestion to prove to disbelieve the oral evidence of P.W.1 and the documentary evidence under Exs.A6 to A11.

The Tribunal further went ahead imported the personal knowledge stating "*the very fact that he had returned to India shows the fact of the troubles of the employees who have gone there and starving without employment and living miserably as can be seen from the recent news and information. Several people gone there are the sufferers.*"

There is no suggestion to P.W.1 to that effect even then the Tribunal gave a perverted finding importing personal knowledge and the facts, which are not on record.

Accordingly, I find that the findings of the Tribunal are perverse hypothical without any admissible or reliable evidence, which are illegal, arbitrary and perverse, warrants interference in the appeal.

In the facts and circumstances discussed above, I find that the deceased was 22 years by the date of accident and was a Kalasi and he was earning from Rs.10,000/- to Rs.12,000/- per month in Indian currency and the appellants-claimants are depending on this income.

Having considered the Indian living conditions, the cost of living, nature of works available in India and since the deceased was having qualification as SSC & ITI and aged about 22 years, relying on the decision in the case of *Setty Chandra Sekhar and another v. Mohd. Ghouse and another*[1] wherein their Lordships held as follows:-

> *"that in view of the present salaries, being earned by Computer Engineers, the deceased being B.Tech., there cannot be any doubt and his monthly income cannot be fixed less than Rs.12,000/- per month."*

But in the present case, the deceased was 22 years, he only did SSC and ITI. It has to be seen that now-a-days, Class IV employees are also getting minimum wage from Rs.7,000/- to Rs.10,000/- per month depending upon their service, whereas the Junior Assistants are getting from Rs.12,000/- to Rs.15,000/- per month. Therefore, considering the normal scales being earned by Government Employees and also self-employed, minimum wage-scale fixed to the technical persons, I am of the view that the minimum salary of the deceased, who is having qualification of SSC and ITI, the salary can be taken as Rs.6,000/ per month.

By applying the decision in *Sarla Verma v. Delhi Transport Corporation*[2], the deceased being 22 years, one month and sixteen days, the relevant multiplier is '18'. Since the deceased was 22 years, 50% of his actual salary can be added towards mutual prospects which worked out at Rs.3,000/- and total income comes to

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[1] *2011 ACJ 2403*
[2] *2009 ACJ 1298 (SC)*

Rs.9,000/- per month. Since the total number of dependents being Five, 1/4th amount has to be deducted towards personal expenses of the deceased, which comes to Rs.6,750/-. By applying multiplier '18', the actual income comes to Rs.14,58,000/- (Rs.6,750/- x 12 x '18' =). Thus, the loss of earning per annum comes to Rs.14,58,000/-. In addition to the total loss of earning which worked out to Rs.14,58,000/-. The appellants-claimants are also awarded Rs.10,000/- towards loss of estate, Rs.2,000/- towards funeral expenses, Rs.2,000/- towards transportation charges, Rs.1,500/- towards damages to the clothes and another Rs.15,000/- towards loss of love and affection. In total the claimants are entitled to Rs.14,88,500/-.

In case of ***Adam Indur Muttemma and others v. Rathod Reddia and others***[3]**,** wherein it was held as follows:-

> *"In appropriate case, from evidence brought on record, if Tribunal considers that claimant is entitled to get more compensation than claimed, it may pass such order. The only embargo being that it should be neither arbitrary/fanciful or unjustifiable, but just compensation."*

In the instant case, the deceased was 22 years who did ITI secured a job in National Contracting Company Limited at Saudi and debiting every month not less than Rs.10,000/- to the dependents. Having taken into consideration that the deceased was a skilled worker working as a Kalasi left over 36 years, had he been alive, he could have great future prospects and he could have helped and assisted to his family and having considered all those facts and applying to the above facts of the case, the claimants are entitled for the total compensation of Rs.14,88,500/- which is just compensation.

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[3] ***2015 (4) ALD 585 (LB)***

Accordingly, the appeal is allowed without costs while setting aside and modifying the award in MOP No.1714 of 2006 dated 23-06-2008 and awarded an amount of Rs.14,88,500/- towards compensation to the claimants, which shall be payable by the respondents 2 & 3 jointly and severally with interest at 7.5% per annum as per the present bank rate of interest from the date of the petition i.e., on 10-11-2006, which shall be deposited (after adjusting the amount already deposited/paid) within a month from the date of receipt of a copy of this judgment. No costs.

Office is directed to prepare award, after payment of Difference Court Fee. The appellants are directed to pay Difference Court Fee on or before 14-06-2017.

The apportionment granted to the appellants-claimants in the order of the Tribunal is modified as follows:-

The first petitioner, being the mother, awarded compensation of Rs.6,00,000/-.

Petitioners 2 & 3 brother and sister of the deceased, are awarded Rs.3,00,000/- each.

Petitioners 4 & 5 being grand parents, fourth petitioner is awarded Rs.1,44,500/- and fifth petitioner is awarded Rs.1,44,000/-.

On such deposit, the first petitioner is permitted to withdraw Rs.3,00,000/-.

The petitioners 2 & 3 each are permitted to withdraw Rs.1,50,000/-.

Petitioners 4 & 5 each are permitted to withdraw Rs.75,000/-.

The balance amount of their respective proportionate amounts shall be kept in any nationalized bank for a period of two years.

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

JUSTICE N. BALAYOGI

Date: 24-04-2017.
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