

THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

MACMA Nos.1017 AND 960 OF 2010

COMMON JUDGMENT:

These appeals are filed challenging the order, dated 16.02.2010 in O.P.No.356 of 2007 on the file of the Motor Accident Claims Tribunal-cum-Principal District Judge, Ranga Reddy District at L.B.Nagar, Hyderabad (for short 'the Tribunal').

2. M.A.C.M.A.No.1017 of 2010 is filed by the appellants seeking enhancement of compensation. M.A.C.M.A.No.960 of 2010 is filed by the Andhra Pradesh State Road Transport Corporation (APSRTC) for setting aside the award of the Tribunal.

3. For the sake of convenience, the parties are referred to as they are arrayed before the Tribunal.

4. The brief facts of the case are that on 10.01.2017 at about 9:00 PM near Chermas Showroom at Hydernagar at National Highway No.9 when the deceased was trying to cross the road on his cycle, a bus bearing No.AP 28W 0629, which was proceeding from Miyapur to Kukatpally in high speed came and hit the deceased, causing multiple injuries to him. He was shifted to Gandhi hospital and while undergoing treatment, he died in the said hospital. The deceased was aged 25 years. He was working as a mason and earning Rs.6,000/- per month prior to his death.

5. The 2nd respondent, who is the owner of the bus remained *ex parte*. The 1st and 3rd respondents filed written statements denying the age, income and occupation of the deceased and also denied the relationship of the deceased with the petitioners, and they are put to strict proof of the same.

6. The Tribunal, on consideration of the evidence, allowed the O.P. in part awarding compensation of Rs.2,28,500/- with proportionate costs and interest at 7.5% per annum.

7. The points for consideration are:

1) Whether the Tribunal was correct in apportioning the contributory negligence on the part of the driver and the deceased?

2) Whether the impugned order is liable to be set aside?

8. Learned counsel for the appellants/claimants mainly contended that the compensation awarded by the Tribunal is inadequate and the Tribunal has wrongly come to conclusion that there is contributory negligence on the part of the deceased and also the driver of the APSRTC in causing the accident.

9. Learned Standing Counsel for the APSRTC contends that there is no negligence on the part of the driver of the RTC bus. He drove the bus very carefully but due to the negligence on the part of the deceased, the accident occurred. He further contends that if the deceased had taken proper care while crossing the road, he would not have met with accident.

10. It is appropriate to refer to the evidence of PW2, who is an eye witness to the incident. P.W.2 stated that on 10.01.2017 at 21:00 hours he was standing on the National Highway for crossing the road near Chermas showroom at the same time one person who was trying to cross the road on bicycle, one bus bearing No.AP 29 W 0629 (APSRTC hired) proceeding from Miyapur to Kukatpally with high speed in a rash and negligent manner and gave dash to the deceased, due to which the deceased received bleeding injuries, and was shifted in 108 Ambulance to the Gandhi Hospital for treatment. It is revealed in his cross-examination that he saw the accident from a distance of 20 yards in front of Chermas

showroom, Kukatpally. At that time the deceased was crossing from right side to left side of the road.

11. Nothing is elicited in the cross-examination to disbelieve the version of this witness stated in the chief-examination. Therefore, there are no grounds to interfere with the findings of the Tribunal fixing the contributory negligence on the part of the deceased and the driver.

12. The deceased was crossing the road from right side to left side. He has to take proper care while crossing the road. It is obvious from the evidence of eye witness that the deceased without taking proper care, has crossed the road and that is why he met with the accident. Therefore, there is definitely contributory negligence on the part of the driver as well as the deceased. The Tribunal has rightly fixed the percentage of liability at 50% on each of them. Therefore, there are no reasons to interfere with the findings of the Tribunal in this regard.

13. Learned counsel for the appellants/claimants submits that the deceased was working as a mason and he was earning Rs.6,000/- per month. He further submits that there is no evidence to show that he was working as a mason and earning Rs.6,000/- per month. Since the deceased was working in an unorganized sector, he requested to take into consideration the minimum wages.

14. In view of the ratio laid down by the Apex Court in *Ramesh Singh v. Satbir Singh*¹, *New India Assurance Company Ltd. v. Smt. Shanti Pathak*², *Oriental Insurance Co. Ltd. v. Syed Ibrahim*³, *New India Assurance Co. Ltd., v. Kalpana (Smt)*⁴, a decision of High

¹ MANU/SC/7089/2008

² MANU/SC/7776/2007

³ MANU/SC/7915/2007

⁴ (2007) 3 SCC 538

Court of Karnataka at Bangalore in *Sri Appayachari v. K. Vadivel and the New India Assurance Company Ltd., rep. by its Manager*⁵ and a decision of High Court of Calcutta in *United India Insurance Co. Ltd. v. Shri Buro Mahara*⁶, the income of the deceased can be taken as Rs.3,000/- per month as he was working in an unorganized sector as a labourer. Therefore, I do not see any reasons to interfere with the finding of the Tribunal.

15. Learned counsel for the appellants/claimants submits that the Tribunal has awarded meager amounts under various heads. It has awarded towards loss of consortium Rs.10,000/-, towards loss of estate Rs.10,000/- and towards funeral expenses Rs.2,000/-.

16. No doubt, the compensation awarded by the Tribunal is meager and therefore, it requires enhancement. In view of the facts and circumstances of the case, the loss of consortium is enhanced from Rs.10,000/- to Rs.50,000/- and the loss of estate is enhanced from Rs.10,000/- to Rs.50,000/- and funeral expenses is enhanced from Rs.2,000/- to Rs.30,000/-.

17. In the result, MACMA No.1071 of 2010 is allowed in part modifying the impugned order passed by the Tribunal, by enhancing the compensation from Rs.2,28,500/- to Rs.3,36,500/- with subsequent interest at 7.5% per annum, from the date of petition, till realisation. The respondents are directed to deposit the amount within two months from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw the entire amount. MACMA No.960 of 2010 is dismissed. There shall be no order as to costs.

⁵ MANU/KA/3721/2013

⁶ MANU/WB/0139/2015

The Miscellaneous Petitions, if any, pending shall stand closed.

GUDI SEVA SHYAM PRASAD,J

Date : 03.03.2017
ssp

