

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA.No.107 OF 2006

JUDGMENT:

Aggrieved by the award and decree, dated 13.06.2005, passed in O.P.No.709 of 2004 on the file of the Chairman, Motor Accidents Claims Tribunal(District Judge), Eluru (for short, 'the Tribunal'), whereby and whereunder a sum of Rs.3,37,100/- was granted as compensation, as against the claim of Rs.4,00,000/- laid under Section 166 of the Motor Vehicle Act, 1988 (for short, 'the Act'), the present appeal is preferred by the 2nd respondent, Vice-Chairman of the erstwhile Andhra Pradesh State Road Transport Corporation Limited, on the main ground that the Tribunal went wrong in appreciating the evidence of RW1 (driver of bus), and in fixing the multiplier and income of the deceased, as such, compensation of Rs.3,37,100/- granted by the Tribunal is excessive and exorbitant.

2. The appellant herein is the 2nd respondent, while respondent No.1 is the wife, 2 and 3 are the minor daughters and respondents 4 and 5 are the father and mother of the deceased, in the original petition.

3. The facts would show that on 10.07.2004, at morning hours, the deceased was pedaling his cycle to go to Eluru to attend mason work on coolie and when he reached near JMJ School (English & Telugu Medium) on Jangareddigudem road near Tangellamudi, at about 8.00 A.M, one APSRTC bus bearing No.AP 10Z 3776 was coming from Eluru side and proceeding towards Jangareddigudem in high speed driven by its driver in a rash and negligent manner, without following traffic rules and without blowing the horn, dashed against the deceased indiscriminately, as a result of which, the deceased sustained multiple grievous and bleeding injuries all over his body. Immediately, he was shifted to Government Headquarters Hospital, Eluru and from there he was shifted to the Global Hospital, Vijayawada and while undergoing treatment, he died on 11.07.2004 at 11.45 A.M. The claimants, being the legal heirs of the deceased, stating that the deceased, aged 28 years, was working as Mason earning Rs.4,000/- per month, sought a compensation of Rs.4,00,000/-

4. Respondent No.1, the driver of the RTC bus, remained *ex parte*. Respondent No.2 opposed the claim by raising various pleas and, in fact, attributed rash and negligent driving to the cyclist, by referring to certain events. They

required the petitioners to prove the age, occupation and income of the deceased. They further pleaded that the claim of the petitioners is highly excessive, arbitrary and baseless.

5. Basing on the said pleadings, the Tribunal framed three issues and held all the issues in favour of respondents/claimants.

6. During enquiry, P.Ws.1 to 3 were examined and Exs.A1 to A6 were marked. On behalf of the respondents, the driver of the bus was examined as RW.1, but no documents were marked.

7. With regard to Issue No.1, PW2 who is an eye witness to the accident, clearly stated that while he was standing by the road side margin near JMC School on Jangareddigudem centre, the deceased was coming from Vegavaram towards Eluru on his cycle and going on the left side of the road margin, one RTC bus bearing No.AP 10 Z 3776 came from Eluru towards Gopannapalem in a rash and negligent manner and dashed against the cycle of the Adinarayana and as a result of which the said Adinarayana sustained severe injuries and admitted in the Government Headquarters Hospital, Eluru, and thereafter he shifted to the Government Hospital, Vijayawada and died on 11.07.2004. The First

Information Report-Ex.A1 clearly revealed the mode of accident and rash and negligent driving of the bus by its driver. In view of the documents coupled with evidence, the Tribunal came to the conclusion that the accident occurred due to rash and negligent driving of the driver of the offending vehicle belonging to the appellant and held the Issue No.1 in favour of the respondents herein.

8. With regard to Issue No.2 i.e. granting of quantum of compensation, the Tribunal has taken only Rs.70/- per day since it is claimed that the deceased is working as Mason and monthly income at Rs.2,100/- and placing reliance on certain decisions of the Hon'ble Supreme Court, made deduction at 1/3rd there from towards personal expenses, applied multiplier '17' and arrived at Rs.2,85,600/- $(2,100 - 1/3 = 1,400 \times 12 \times 17)$ as compensation towards loss of estate besides awarding Rs.14,000/- towards medical bills, Rs.15,000/- towards loss of earning and Rs.20,000/- towards mental agony apart from Rs.2,500/- towards funeral expenses and awarded Rs.3,37,100/- as total amount of compensation with interest at 9% per annum from the date of petition till the date of realization.

9. It is the aforesaid order which is under challenge in the instant appeal on the grounds already stated above.

10. Heard Sri S.V.Ramana, learned Standing Counsel appearing for the appellant, and Sri Mohd.Yousuf, learned counsel for respondent Nos.1 to 6

11. Heard learned counsel for the petitioner who submits that without any proof of income, the Tribunal has assessed the income of the deceased at Rs.2,100/- per month and erred in applying '17' as multiplier. He also submits that the Tribunal wrongly comes to the conclusion that there was negligence on the part of the driver of the appellant; and that interest awarded is also excessive.

12. Perused the order under challenge and the evidence on record, both, oral and documentary, let in by the petitioners and the evidence of R.W.1, who is respondent No.1 in the claim petition.

13. Though, the learned counsel for the Corporation made an attempt to show that there is negligence on the part of the deceased, the Tribunal basing on the documents and evidence the clearly held that the accident occurred only due to the rash and negligent driving of the driver of the appellant and I do not see any valid reason to interfere with the said finding.

14. So far as determination of compensation is concerned, this Court does not find any reason to disturb the assessment of income as well as multiplier adopted by the Tribunal. The Tribunal has taken only Rs.70/- per since it is claimed that the deceased is working as a Mason and monthly income at Rs.2,100/- and deducted 1/3rd towards personal expenses. As per the Post Mortem certificate, since the age of the deceased is shown as 28 years, adopted '17' as multiplier as per the Judgment of the Apex Court in **Sarla Verma & others v. Delhi Transport Corporation and another**¹.

15. Though claimants are entitled to Rs.70,000/- under conventional heads, the Tribunal granted only Rs.22,500/-. If the law laid down by the Hon'ble Supreme Court in the recent past is applied, certainly, the petitioners would be entitled to more than what was granted by the Tribunal. Hence, there is no merit in the instant appeal. Any how, the claimants are not the appellants. In view of the above, I do not see any reason to interfere with the amount of compensation awarded by the Tribunal. Hence, there is no merit in the instant appeal.

16. The interest that is being granted as per the Judgments rendered by the Supreme Court in **T N State Transport**

¹ (2009) 6 Supreme Court Cases 121

Corporation v. Rajapriya and two others ² and **Rajesh and others v. Rajbir Singh and others**³ is 7.5%, the rate of interest is reduced from 9% to 7.5% per annum.

17. Accordingly, the appeal is disposed of, confirming the award and decree passed by the Tribunal in all respects, except the rate of interest. No order as to costs.

As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, shall stand closed.

01.02.2018
tk.



A.RAJASHEKER REDDY, J

² 2005 (6) SCC 236

³ 2013 ACJ 1403