THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2578 of 2005
and
Cross Objections (SR) No.44383 of 2005

JUDGMENT:-

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the appellant-APSRTC (now 'TSRTC') aggrieved by the Order, dated 28.06.2005, passed in O.P.No.654 of 2002 by the Motor Accident Claims Tribunal-cum-I Additional District Judge, Karimnagar (for short 'the Tribunal') and the claimants preferred Cross Objections (SR) No.44383 of 2005 seeking enhancement of compensation.

2. Heard the learned counsel for both sides and perused the record. For clarity and convenience, the parties will be hereinafter referred to as per their array before the Tribunal.

3. The learned Standing Counsel for the appellant-TSRTC would contend that the Tribunal had granted excess compensation by taking the monthly salary of the deceased as Rs.4,396/-. No person was examined to prove Ex.A6-salary certificate. There is no legally acceptable evidence that the deceased was working as a cook in SC Boys Hostel, Bommanapally Village. The Tribunal granted excess compensation on other heads also and prayed to reduce the same. It is also contended that the deceased was going on bicycle in a rash and negligent manner and dashed the TSRTC bus. Therefore, the claimants are not entitled for any

compensation and ultimately prayed to set aside the impugned order.

4. The learned counsel for respondents/claimants would contend that there is ample evidence on record to believe that the deceased died due to the rash and negligent driving of the driver of the RTC bus bearing No.AP-10Z-4325. There is no evidence to believe that the deceased was negligent and responsible for his death. The Tribunal rightly held the said issue. As far as assessment and grant of compensation is concerned, the Tribunal ought to have granted compensation by taking the monthly income of the deceased as Rs.5,400/- basing on Ex.A6-salary certificate. The Tribunal erroneously took the monthly income of the deceased as Rs.4,396/- and the Tribunal also granted lesser amount on other conventional heads and ultimately prayed to enhance the compensation.

5. In view of the submissions made by both sides and cross objections filed, the points that arise for determination are:-

1) Whether the deceased-Komuraiah died due to the rash and negligent driving of RTC bus bearing No.AP-10Z-4325 or due to his own negligence?
2) Whether the compensation awarded by the Tribunal is liable to be modified?

6. <u>POINT No.1</u>:- P.W.1 is the wife of the deceased. She is not an eye witness to the occurrence of accident. The evidence of P.W.2 reveals that on 12.01.2002 in the evening when he went to kirana shop near the bus stand, he observed

the deceased in this case riding the cycle. When the deceased reached the market cross road, RTC bus bearing No.AP-10-Z-4325 came from Jammikunta side in a rash and negligent manner and dashed against the cycle of the deceased. As a result of which, the deceased sustained fatal injuries and shifted to the Government Hospital, Huzurabad. On the same day, he succumbed to the injuries. In cross-examination, he reiterated what he deposed in his chief-examination and denied that the deceased was negligent and responsible for occurrence of the accident. Ex.A1-FIR and Ex.A2-inquest report reveal that the deceased succumbed to the injuries due to the rash and negligent driving of RTC bus bearing No.AP-10-Z-4325. Ex.A3-postmortem report shows that the deceased received multiple injuries and the said injuries are possible in motor accident. It further shows that the deceased succumbed to the grievous injuries. Though the learned counsel for the RTC contended that due to the rashness and negligence on the part of the deceased, the accident occurred, neither oral nor documentary evidence was produced to substantiate the same. Therefore, the Tribunal rightly held that the subject accident leading to death of the deceased occurred due to rash and negligent driving of driver of offending RTC bus. Hence, there is nothing to take a different view. The point No.1 is answered accordingly.

7. <u>POINT No.2</u>:- As per the evidence of P.W.1, the deceased was working as a cook in SC Boys Hostel, Bommanapally Village. Ex.A6-salary certificate shows the gross salary of the deceased as Rs.5,400/- and net salary as

Rs.4,396/-. The Tribunal had taken the monthly salary of the deceased as Rs.4,396/-, deducted 1/3rd towards personal expenses, applied relevant multiplier and assessed an amount of Rs.4,92,408/- towards loss of dependency. The Tribunal also granted Rs.10,000/- towards loss of consortium, Rs.5,000/- each of the petitioners 2 to 6 towards loss of love and affection. In all, the Tribunal granted compensation of Rs.5,28,000/- with interest @ 9% per annum.

8. No official from the SC Boys Hostel, Bommanapally village or any other superior officer governing the administration of Hostel was examined to substantiate Ex.A6-salary certificate as genuine and that the deceased was getting monthly salary of Rs.5,400/- and to establish that the employment of the deceased was permanent. Mere marking of a document is not sufficient. The parties have to let in cogent and convincing evidence to prove the documents. If the deceased was a permanent employee, nothing prevented the claimants from examining the person, who issued salary certificate. Therefore, it is not safe to act upon Ex.A6-salary certificate.

9. The accident occurred on 12.01.2002. The deceased succumbed to the injuries on the same day. The cost of living prevailing then is required to be taken into consideration to assess and award the compensation payable to the claimants. As per the record, there are six dependents on the deceased, i.e., his wife and children. So the Tribunal ought to have deducted 1/4th but not 1/3rd from the income of the deceased to assess loss of dependency. As per the record, the deceased was

41 years old. The suitable multiplier for the age of 41 is '14'. The Tribunal has taken the same multiplier. No doubt, the deceased was an earning member and the claimants are dependents on him.

10. In view of the circumstances of the case, as the deceased was a private employee, his earnings can be taken as Rs.3,200/- per month. By the date of accident, the age of the deceased was 41 years. Hence, 25% is required to be added as future hike, which comes to Rs.4,000/- per month and annual income comes to Rs.48,000/-. After deducting 1/4th towards the personal expenses of the deceased, the net contribution to his family comes to Rs.36,000/-. After applying the multiplier '14', the loss of dependency comes to Rs.5,04,000/-. Further, as per the decision of the Apex Court in *National Insurance Co. Ltd., Vs. Pranay Sethi and others*[1], claimant No.1/wife is entitled to Rs.40,000/- towards loss of consortium and the claimants are entitled to Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate. In all, the claimants are entitled to compensation of Rs.5,74,000/- (Rs.5,04,000/- + Rs.70,000/-). The enhanced compensation of Rs.5,74,000/- carries interest @ 7.5% per annum from the date of petition till the date of deposit. The point No.2 is answered accordingly.

13. In the result, the appeal filed by the RTC is dismissed and the Cross Objections (SR) No.44383 of 2005 filed by the claimants are partly allowed modifying the order, dated 28.06.2005 passed by the Tribunal in O.P.No.654 of 2002

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enhancing the compensation from Rs.5,28,000/- to Rs.5,74,000/- with interest @ 7.5% per annum on the enhanced compensation from the date of petition till the date of deposit. On such deposit of enhanced compensation, 1st claimant/wife is entitled to 50% of the same. Insofar as the remaining 50% of the enhanced amount is concerned, all the other claimants are entitled to share it equally. The other directions given by the Tribunal remain unaltered. The appellants-claimants are permitted to withdraw the entire amount with interest as per the aforesaid apportionment of their shares.

Miscellaneous petitions, if any, pending in both these appeals, stand closed. No order as to costs.

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Dr. SHAMEEM AKTHER, J

Date: 30.07.2018
ssp