

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA No.927 of 2006

JUDGMENT:

This Appeal is filed by the claimants, having dissatisfied with the award of Rs.1,68,000/- towards compensation, as against Rs.3,00,000/-, claimed under Section 163(A) of the Motor Vehicles Act, 1988, seeking enhancement of the same against the order dated 24-11-2005 in M.V.O.P. No.332 of 2004, passed by the learned Motor Accidents Claims Tribunal - cum -II Addl.District Judge, Cuddapah (for short 'the Tribunal').

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the Tribunal and late Kumarakalva Ramakka, who died in the accident, as deceased.

3. The facts, in brief, are that the appellants herein are claimants 1 to 5 and children of the deceased; that on 05.06.2003 at 4.00 p.m, the deceased was travelling in a RTC bus from Vempalli to his Village and when the same reached near the outskirts of Kondavandlapalli village on Rayachoty-Vempalli man road, the 1st respondent's lorry bearing No.AAD 8538 came in opposite direction, driven by its driver in a rash and negligent manner at speed and

dashed against the RTC bus, resulting which the passengers including the deceased received severe injuries and admitted in Government Hospital, Vempalli and thereafter referred to G.G.H, Cuddapah and thereafter referred to G.G.H, Kurnool, where she died on 09.06.2003 while undergoing treatment; that the deceased was aged 40 years and was working as buffalo grazer and used to earn Rs.5,000/- per month; that the father of the claimants died long back and that the accident occurred due to rash and negligent driving of the offending lorry. The claimants being legal heirs of the deceased claimed compensation of Rs.3,00,000/- for the death of their mother.

4. The 1st respondent filed counter denying the allegations in the petition and the claimants are put to strict proof that they are legal heirs of the deceased; that he is the owner of the lorry and the same was insured with 2nd respondent and same is in force; that the driver of lorry was holding valid driving licence, as such, the liability of 1st respondent shall be indemnified by the 2nd respondent under the contract of insurance.

5. The 2nd respondent filed counter admitting the accident and denied the other averments in the petition; that the accident occurred due to rash and negligent driving of the driver of RTC bus, but not due to the rash and negligent driving of driver of offending lorry; that the driver

of the lorry was not holding valid driving licence at the time of the accident; that the 1st respondent played fraud and got filed the charge sheet against another driver and that the 2nd respondent is not liable to indemnify the 1st respondent and that if any compensation granted, the 1st respondent alone is liable to pay the same.

6. Based on the above pleadings, the Tribunal framed the following issues:

- “(i). Whether the death of Kummarakaluva Ramakka alias Ramulamma mother of petitioners was occurred due to negligent act of the driver of the crime vehicle?
- (ii). Whether the claimants entitled for compensation and if so, for what amount?
- (iii). To what relief?

7. In order to prove the case of the petitioners, 1st petitioner was examined himself as P.W.1 and Exs.A1 to A5 are marked and also got examined timmanaboina Bayanna as P.W.2 and Yerragani Pedda Gangaiah as P.W.3 on their behalf. The respondents 1 and 2 did not choose to let-in any oral or documentary evidence.

8. After considering the oral and documentary evidence on either side, an amount of Rs.1,68,000/- was awarded towards compensation with interest at 7.5% per annum from the date of petition till realization, against 2nd respondent and rest of the petition claim is dismissed without costs. Aggrieved by the same, present appeal is filed.

9. Heard learned counsel for the petitioners and Sri B.Venkataratnam, learned Standing Counsel for 2nd respondent.

10. The Tribunal, based on the evidence of P.W.2 coupled with documentary evidence Ex.A1 i.e., certified copy of First Information Report in Cr.No.28/2003 of Chakrayapet Police Station, came to the conclusion that the accident occurred due to rash and negligent driving of the offending lorry bearing No. AAD 8538, by its driver, resulting the death of the deceased. In the absence of any rebuttal evidence adduced on behalf of the respondents, the Tribunal held that the accident occurred due to the rash and negligent driving of the driver of the offending lorry resulting the death of the deceased, and in view of the acceptable evidence, the finding recorded by the Tribunal on this issue needs no interference. Moreover, the petitioners are claiming only enhancement of compensation, this Court need not examine the other aspects, as the respondents have not raised any objections in that regard and also not filed any appeal.

11. It is the case of the petitioners that the deceased was working as buffalo grazer and collect dung and earning Rs.5,000/- per month. The Tribunal, though there is no documentary evidence, taken the income of the deceased as Rs.1,250/- per month and Rs.15,000/- per annum and

after applying multiplier '16', the amount was derived at Rs.2,40,000/- and that after deducting 1/3rd towards personal expenses of the deceased, an amount of Rs.1,60,000/- was arrived at towards loss of dependency to the petitioners. In similar circumstances, the Hon'ble Supreme Court in the judgment reported in **Syed Sadiq etc v. Divisional Manager, United India Insurance Company**¹, had taken the income of a labourer was taken as Rs.4,500/- per month. Since the deceased was stated to be working as a buffalo grazer, her income shall be taken as Rs.4,500/- per month. Since there are five claimants, as per **Sarla Verma v. Delhi Transport Corporation**², one-fourth of the amount shall be deducted towards her personal and living expenses, which comes to Rs.3,375/- per month (Rs.4,500-Rs.1,125/-) and Rs.40,500/- per annum.

12. Coming to the multiplier, it is the case of the petitioners that they are the children of the deceased and their father died long back; that the deceased was aged about 40 years, but the petitioners have not filed any documentary proof to that effect. The Tribunal noticed that the age of the deceased was 36 years by the date of the accident, as such, the Tribunal concluded that the age of the deceased was ranging between 36 to 40 years by the date of accident. Since there is no rebuttal

¹ AIR 2014 Supreme Court 1052

² (2009) 6 SCC 121

evidence on behalf of the respondents, the age of the deceased can be taken as 36 to 40 years. Therefore, the same can be taken for calculating the multiplier. As per **Sarla Verma' case**, the appropriate multiplier to be applied for calculating loss of income to the petitioners is 13. If the same is calculated it comes to Rs.6,07,500/- (Rs.40,500/- x 15) towards loss of dependency. Besides the same, as per the judgment of the Constitution Bench of the Supreme Court in **National Insurance Company Limited vs. Pranay Sethi**³ petitioners are also entitled for the loss of estate, loss of consortium and funeral expenses an amount of Rs.15,000/- and Rs.15,000/- respectively which comes to Rs.30,000/- is awarded. Thus the petitioners are entitled to Rs.6,07,500+ Rs.30,000/- = Rs.6,37,500/-.

14. So far as the interest is concerned, the Tribunal awarded interest at the rate of 7.5% per annum from the date of petition till realization and that even as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**⁴, petitioners are entitled for interest @ 7.5% per annum. Though the claimants made a claim only for a sum of Rs.3,00,000/- the Hon'ble Supreme Court in **Nagappa vs. Gurdoyal Singh**⁵ ruled

³ 2017 ACJ 2700

⁴ 2013 ACJ 1403

⁵ 2002 AIR SCW 5348

that award of compensation in excess of amount claimed in the claim petition is permissible, as there is no stipulation in the [Motor Vehicle Act](#) to restrict award of compensation limited to the claim made by the claimants. It was also observed that technicalities of law should not be permitted to stand in the way and a fair compensation should be paid in respect of deaths. The claimants therein were awarded more than claim made by them, as it was found they were entitled for more compensation than claimed. Applying the ratio laid down in **Nagappa's** (supra), the appellants-claimants are awarded compensation of Rs.6,37,500/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization of the amounts. The claimants are required to pay the Court fee on the enhanced amounts as they have paid the Court fee on Rs.3,00,000/-. The apportionment of compensation amount including the enhanced compensation shall be as per the apportionment made by the Tribunal and the same shall remain unaltered.

In the result, the appeal is allowed enhancing the compensation to Rs.6,37,500/- (Rupees six lakhs thirty seven thousand five hundred only), with interest at the rate of 7.5% per annum from the date of petition till realization. There shall be no order as to costs. The impugned award

of the Tribunal in OP No.332 of 2004 is modified to the extent indicated above. On deposit of enhanced compensation, the Tribunal shall deduct the amounts towards Court fee in excess of Rs.3,00,000/- as Court is already paid on 3,00,000/-. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed. No order as to costs.

Dated: 16-03-2018.
kvs

A.RAJASHEKER REDDY, J



HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY



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