

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA No.937 of 2006 & XOBS

JUDGMENT:

The respondent-South Central Railways is the appellants herein. MVOP No.1406 of 2002 was filed by the claimants 1 to 4-respondents herein. 1st claimant is the wife, claimant no.2 is the child and claimants 3 and 4 are mother and father of the deceased. Claim is laid for an amount of Rs.2,00,000/- on account of death of Kota China Hanumaiah in a motor accident that occurred on 22-04-1996 involving the tractor No.AP 7U 809 collided with the train engine. By the impugned judgment, the Motor Vehicles Accidents Claims Tribunal, Guntur, awarded a sum of Rs.1,70,000/- with interest at 6% per annum. Aggrieved by the same this appeal by the South Central Railways represented by its General Manager. The claimants-respondents also filed across appeal seeking enhancement of the compensation in this appeal.

2. Facts stated are:-on the fateful day *i.e.* on 22-04-1996, at about 4-30 a.m., while Kota China Hanumaiah (since

deceased), was going on the tractor bearing registration no.AP 7U 809 as is driver, and when the tractor reached near Kesanapalli railway gate, in between Piduguralla and Nadikudi railway stations at KM no.93/9-10 at LMC gate no.81, and at that time, the Gate-man on duty kept the railway gate open, instead of closing the gate even though the train was approaching from Guntur side towards level crossing. The driver (deceased) of the tractor came towards the said railway level crossing gate and since the gate was opened, he drove the tractor slowly by observing the traffic and tried to cross the tracks, but in the meanwhile, suddenly, a train engine (Narayanadri Express) which is coming from Tirupati to Secunderabad came and hit against the tractor and ran over the same resulting in instantaneous death of the driver of the tractor and other two persons. That Railway Police, Guntur, registered a case in Cr.No.31 of 1996 and filed charge sheet against the Gate-man and the Asst. Station Master, Nadikudi Railway Station, under Section 304-A and 201 IPC. The accident

occurred totally due to the negligence of the railway Gate-man and the Asst. Station Master of Nadikudi Railway Station, who are the employees of the appellant-South Central Railways.

3. It is stated that as on the date of the accident the deceased was aged 25 years and he was hale and healthy and was earning Rs.2,500/- per month by working as driver of the tractor. Due to the sudden demise of the deceased, the claimants lost their bread earning member and they are dependent on his earnings and they have no other source of income.

4. The claim of the claimants-respondents herein was opposed by the appellant herein. In the written statement it was stated that it is not practically possible to keep the gate continuously closed against the road traffic since it is situated on the highway. That the road vehicle users had adequate visibility of the railway level crossing gate since the road is perpendicular to the track, with no bushes or other obstructions on either side of the track. That the driver of

the tractor was carrying two persons sat on either side of the mudguards against the rules, as no other person, other than the driver of the tractor is allowed to travel on the tractor. That the tractor was equipped with a tape recorded and at that time the tape recorder was playing loudly while the tractor approaching the level crossing gate and as a result of which, the attention of the tractor driver was diverted as all of them were immersed in the music played loudly. That the tape recorder was also seen at the spot of the accident and the driver of the tractor in a rash and negligent manner drove the tractor without observing the approaching train and collided with the railway engine therefore, the driver of the tractor was at fault and caused the accident with the railway engine.

5. In order to prove their case, the 1st claimant was examined as PW1 and got marked Exs.A1 to A5. On behalf of the Railways, RW1 was examined, but no documents were marked.

6. The Tribunal, considering the rival contentions and evidence brought on record, as regards the culpability in causing the accident, found that the Gate-man at a railway-cum road level crossing is appointed to operate the gate as and when the trains pass through the level crossing, and the accident occurred only due to the fault of the Gate-man and the Asst. Station Master for not closing the railway gate at that time of the accident. In view of the oral evidence adduced and it is also common understanding that if the railway gate, at a level crossing is not closed by the Gate-man, the persons passing through that level crossing on vehicles presume that no train is coming at that moment, therefore, the finding recorded by the Tribunal on this issue needs no interference.

7. Learned standing counsel for the appellant-South Central Railways contended that the Tribunal has no jurisdiction in cases of accidents connected with Railways and the jurisdiction of the Tribunal is exclusively limited to claims in respect of motor vehicles accidents and not

inclusive of train engines, compartments and other vehicles that move on rails. Learned counsel also contended that it is a case of contributory negligence on the part of the driver of the tractor as the driver of the tractor did not follow Rule 436 (2) of the Rules framed under the Motor Vehicles Act which mandates that whenever a driver of a motor vehicle intends to cross the railway track at a level crossing, the driver of the motor vehicle shall stop the vehicle, observe on either side, and after finding that no train is approaching, the driver as to proceed further and in this case the driver of the tractor did not comply this safety rule. Learned standing counsel also contended that the tape recorder was playing loudly as a result the attention of driver of the tractor was diverted, as a result the tractor collided with the engine of the train.

8. In **PILLI KAMARAJ vs. SAJJA CHANDRAMOULI's** case¹ (1992 LawSuit (AP) 1) in a similar fact situation where the claimants approached the Motor Accidents Claims Tribunal for compensation under the Motor Vehicles Act, in respect of

a rail engine accident when the jeep was stuck up on the railway track, due to mechanical failure, a passenger train came and the engine smashed the jeep which ultimately resulted in the death of five persons, this Court observed that in case of composite negligence, the Motor Accidents Claims Tribunal is disabled to pass any award against the railway administration and similarly the Railway Claims Tribunal is also disabled to determine the compensation with regard to the driver, owner and insurer of the vehicle concerned and when both the Tribunals are disabled to determine the entire issue i.e., whether the accident took place due to the rash and negligent driving of the driver of the railway engine or the motor vehicle and in the absence of any forum that is available to determine the composite negligence, it is only the civil Court that is competent to decide the nature and degree of composite negligence and all the parties can be joined in such proceedings. This decision of this Court in **PILLI KAMARAJ's** case (1 supra) came up for consideration before a Division Bench of Madhya Pradesh

High Court in **MANIKLAL DUBEY vs. MOHD.ISMAIL's** case² (1998 ACJ 888), wherein Division Bench, after considering the decisions rendered on the same subject matter by the Gujarat, Allahabad, Kerala and Rajasthan High Courts, in agreement of those judgments did not concur with the view taken by this Court in **PILLI KAMARAJ's** case (1 supra) and held that claim petition based on negligence on part of the driver of the motor vehicle or claim petition based on composite negligence i.e. the driver and outside agency (in this case Railways) cannot be dismissed at the threshold on the ground that the Motor Accidents Claims Tribunal no jurisdiction to fix the liability and to pass an award. However, in this case whether the Motor Accidents Claims Tribunal has jurisdiction to try the claim or not is not required to be considered, as the 1st claimant in this case has filed writ petition being WP No.24091 of 1999, and this Court by order dated 31-10-2002 disposed of the said writ petition permitting the 1st claimant herein to approach the Tribunal constituted under the provisions of the Motor

Vehicles Act for payment of compensation on account of the death of her husband in the alleged railway accident by impleading the Railways as a party-respondent and on such claim being made, the Tribunal shall consider and dispose of the same after giving opportunity to both the parties and in accordance with law. This order passed by this Court has become final and no appeal was filed by the appellant-Railways. Therefore, it is not open for the appellant-Railways now to contend that the Motor Accidents Claims Tribunal has no jurisdiction to adjudicate the claim of the claimants and to pass an award more particularly it has subjected to the jurisdiction of the Tribunal. The other contentions canvassed by the learned standing counsel that the driver of the tractor, at the relevant time, was playing the tape recorder loudly and he was fully immersed in listening to the music cannot be accepted, as no evidence is produced to prove the same. It is true that a tape recorder was recovered from the scene of accident, but that itself will not

prove that the driver of the tractor was listening to the music loudly at that early morning at around 4-30 am.

9. Coming to the adequacy or otherwise of the compensation granted by Tribunal, learned counsel for the claimants-respondents urged that the Tribunal erred in fixing income of the deceased at Rs.15,000/- per annum.

Learned counsel contended that given the inflation at the relevant time, a minimum of Rs.3,000/- per month ought to have been as income of the deceased who was the driver of the tractor. Learned counsel also relied on the decision in **LATA WADHWA vs. STATE OF BIHAR's** case³ (2001) 8 SCC 197) in support of his contention. The Supreme Court in

LATA WADHWA's case (3 supra) dealing with the income vis-à-vis the services rendered by a housewife held that in view of the multifarious services rendered by a housewife, an amount of Rs.3,000/- per month would of taken as income, even on a modest estimation, in the age group of 34 to 59. In this case the deceased was aged 25 years, as on the date of the accident and in the absence of contrary

evidence that the deceased had no capacity to earn Rs.100/- per day, even considering him as driver of the tractor, the income of the deceased can be safely taken at Rs.100/- per day, and if the same is taken as his daily income, monthly it works out to Rs.3,000/- and annually Rs.36,000/-. In

NATIONAL INSURANCE COMPANY LIMITED vs. PRANAY

SETHI's case⁴ (2017 ACJ 2700), a Five Judge Constitution Bench of the Supreme Court laid down guidelines on fixation of future prospects for deciding compensation in motor accidents claims. The Constitution Bench after analyzing all the previous precedents on award of just compensation under the Motor Vehicle Act including the decisions in ***SARLA VERMA vs. DTC, RESHMA KUMARI vs.***

MADAN MOHAN & RAJESH vs. RAJBIR SINGH recorded conclusions, which reads as under:-

“In view of the aforesaid analysis, we proceed to record our conclusions:-

(i).....

(ii).....

(iii) While determining the income, an addition of 50 per cent of actual salary to the income of the deceased towards future prospects, where

the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30 per cent, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15 per cent. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40 per cent of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25 per cent where the deceased was between the age of 40 to 50 years and 10 per cent where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

*(v) For determination of the multiplier, the deduction for personal and living expenses, the Tribunals and the Courts shall be guided by paragraphs 14 and 15 of **Sarla Verma**, 2009 ACJ 1298 (SC), which we have reproduced hereinbefore.*

*(vi) The selection of multiplier shall be as indicated in the Table in **Sarla Verma**, 2009 ACJ 1298 (SC), read with paragraph 21 of that judgment.*

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10 per cent in every three years.”

10. From this it is clear that where in cases the deceased was self employed, or on a fixed salary, an addition of 40% of the established income should be added where the

deceased belonged to the age of group of 40 years, in this case 25 years. If 40% of established income is to be added towards future prospects, 40% of Rs.36,000/- comes to Rs.14,400/- (Rs.36,000 + Rs.14,400 = Rs.50,400/-), the annual net contribution plus 40% future prospects comes to Rs.50,400/-. There is no tax component as the annual income of the deceased, plus the amounts towards 40% future prospects is coming only to Rs.50,400/- per annum. By the applying the ratio laid down in **SARLA VERMA vs. DELHI TRANSPORT CORPORATION's** case⁵, deduction is to be made having regard to the number of claimants dependant on the deceased. Since there are four claimants in this case, 1/4th is to be deducted towards his personal expenses had he been alive, and the net annually contribution of the deceased to his family comes to (Rs.50,400 - 1/4th = Rs.37,800/-), Rs.37,800/- and considering the age of the deceased as on date of the accident at 25 years, the appropriate multiplier by following the table set out in **SARLA VERMA's** case (5 supra) is '18'

(Rs.37,800 x 18), thus the loss of dependency on account of death of deceased comes to Rs.6,80,400/-. In addition to this amount, the claimants are also entitled to a sum of Rs.15,000/- towards loss of estate, Rs.15,000/- towards funeral expenses and Rs.40,000/- towards loss of consortium totaling to Rs.7,50,400/- rounded off to Rs.7,50,000/- and the claimants (cross appellants) are entitled to receive the amounts now awarded less the amounts what they have already received. The respondents-claimants made a claim only for a sum of Rs.2,00,000/-. The Supreme Court in **NAGAPPA vs. GURDAYAL SINGH's** case⁶ (2002 AIR SCW 5348) ruled 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** case (6 supra), the claimants-cross appellants are awarded compensation of Rs.7,50,000/- with interest at the rate of 7.5% per annum, instead of 6% per annum awarded by the Tribunal, in the light of the decision of the Supreme Court in **RAJESH vs. RAJBIR SINGH's** case⁷ (2013 ACJ 1403) from the date of petition till the date of realization of the amounts. The respondents-claimants are required to pay the Court fee on the enhanced amounts as they have paid the Court fee only on Rs.2,00,000/-, before withdrawing the amounts now awarded. 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.

11. In the result, the appeal is dismissed, however, the Cross Appeal filed by the claimants is allowed enhancing the compensation to Rs.7,50,000/- with interest at the rate of

7.5% per annum from the date of claim petition till the date of realization of the amounts. The impugned award of the Tribunal in MVOP No.1406 of 2002 is modified to the extent indicated above. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed. No order as to costs.

Dated: 16-03-2018.
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A.RAJASHEKER REDDY, J



HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY



**M.A.C.M.A. No.937 OF 2006 &
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Date: 16-03-2018

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