

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA No.914 of 2006

JUDGMENT:

This Appeal is filed by the claimant, having dissatisfied with the award of Rs.64,500/- towards compensation, as against Rs.1,50,000/-, claimed under Sections 140 and 166 of the Motor Vehicles Act, 1988 read with Rule 455 of the Andhra Pradesh Motor Vehicles Rules, 1989, seeking enhancement of the same against the Award dated 19-05-2003 in M.V.O.P. No.393 of 2002, passed by the learned Motor Accidents Claims Tribunal - cum – Principal District Judge, Kurnool, (for short 'the Tribunal').

2. For the sake of convenience, the parties hereinafter will be referred to as arrayed in the Original Petition. Brief facts which are necessary for disposal of this Appeal are as follows:

That on 05.01.2002, the deceased and seven others boarded a jutka of Basheer Ahmed in Nandikotkur in order to go to Veepanagandla and when proceeding towards Veepanagandla at about 7.15 p.m, when the same reached near Degree Colege, a bus bearing No.AP 10/Z 2079 came in opposite direction with high speed in a rash and negligent manner driven by its driver from Nandyal dashed against jutka. As a result of which, all the inmates of jutka received injuries and two of them

died on the spot. Whereas the deceased Beeban Bee died on the way while she was being taken to Government General Hospital, Kurnool in another RTC bus for treatment. On intimation, the Nandikotkur Police, registered a case in Cr.No.1 of 2002 under Sections 337, 304-A and 429 IPC. The deceased was aged about 60 years and that the deceased was hale and healthy and was earning Rs.80/- per day; that the petitioner is the younger son of the deceased; that since the accident occurred due to rash and negligent driving of the driver of the offending bus, petitioner claims compensation of Rs.1,50,000/- against the 1st respondent Corporation.

3. The 1st respondent counter denying the averments of the petition and contended that there is no negligence on the part of the driver of the 1st respondent's bus; that there is no rashness or negligence on the part of the bus driver and the driver of the bus is not at all responsible for the accident.

4. Though the respondents 2 to 5 appeared through an advocate, after receiving notices, subsequently, they did not choose to file counter and they were set ex parte as per the orders of the Tribunal on 09.10.2002.

5. Based on the above pleadings, the following issues were framed by the Tribunal.

1. Whether the accident that occurred on 5.1.2002 at about 7.15 P.M after crossing the New Degree College, between Nandikotkur to Nandyal road, which resulted in the death of Shaik Beeban Bee W/o.late Shaik Chinna Gokari Saheb, was on account of the rash and negligent driving of the A.P.S.R.T.C bus bearing No. AP 10/Z 2079 by its driver?
2. Whether the petitioner is entitled for the claimed amount of Rs.1,50,000/-? If not, how much and against whom?
3. Whether the respondents 2 to 5 are entitled for the claimed compensation? If so, to what amount?
4. To what relief?
6. To prove the case of the petitioner, P.Ws.1 and 2 were examined and got marked Exs.A1 to A5. On behalf of the 1st respondent, one M.B.L Sastry, who worked as conductor in the accident bus on that day was examined as R.W.1 and no document was got marked on its behalf.
7. The Tribunal, after considering both the oral and documentary evidence adduced on either side, awarded compensation of Rs.64,500/- against the 1st respondent along with interest @ 9% per annum. Being dissatisfied with the compensation awarded by the Tribunal, petitioner filed the present appeal.
8. With regard to the culpability in causing the accident, the Tribunal examined PWs.1 and 2 and Ex.A-1 contents of the FIR and Ex.A4 charge sheet filed against the driver of the offending bus in Cr.No.116 of 2002 on the file of Judicial magistrate of First Class, Nandikotkur. P.W.2 is the eye witness, who witnessed the accident. On

behalf of the 1st respondent, R.W.1, who is conductor of the offending bus on the day of the accident was examined. The Tribunal disbelieved the version of R.W.1 being interested witness. The P.W.2 is an independent witness, who witnessed the accident. The Tribunal, believed the version of independent witness i.e, P.W.2 and also taking into consideration of Ex.A4 Charge sheet, held that the accident occurred due to rash and negligent driving of the offending bus by its driver. In view of the same, the finding recorded by the Tribunal on this issue needs no interference. Moreover, the petitioner is claiming only enhancement of compensation, this Court need not examine the other aspects, as the 1st respondent has not raised any objections in that regard and also not filed any appeal.

9. Learned counsel for the petitioner submits that though petitioner claimed meagre amount, the compensation awarded by the Tribunal is not the just compensation. He submits that the deceased was working as coolie and the Tribunal, instead of taking the income of the deceased as Rs.80/- per day, had taken only Rs.50/- per day. He submits that the Tribunal instead of taking the multiplier as per ***Sarla Verma v. Delhi Transport***

Corporation¹ towards loss of future income, had taken only '5' as multiplier as per second schedule to the Motor Vehicles Act. He also submits that only Rs.2,000/- was granted for funeral expenses and Rs.2,500/- towards loss of expenses.

10. None appeared on behalf of the 1st respondent Corporation.

11. In this case, it is to be seen that the Tribunal has recorded a specific finding on appraisal of the evidence adduced by P.W.1 that the deceased was working as an agricultural coolie. Though it is deposed that the deceased was earning Rs.80/- per day, the Tribunal has taken the income of the deceased as Rs.50/- per day and Rs.1,500/- per annum and Rs.18,000/- per annum. But Hon'ble Supreme Court in the judgment reported in **Sri Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Limited**² held as follows:

"14. In the instant case, it is not in dispute that the appellant was aged about 35 years and was working as a Coolie and was earning `4500/- per month at the time of accident. This claim is reduced by the Tribunal to a sum of `3000/- only on the assumption that wages of the labourer during the relevant period viz. in the year 2004, was `100/- per day. This assumption in our view has no basis. Before the Tribunal, though Insurance Company was served, it did not choose to appear before the Court nor did it repudiated the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning a sum of `3000/- per month. Secondly, the appellant was working as a Coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant. We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to

¹ (2009) 6b Supreme Court Cases 121

² 2011 (6) ALT 48 (SC)

ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guess work, which may include the ground realities prevailing at the relevant point of time. In the present case, appellant was working as a Coolie and in and around the date of the accident, the wage of the labourer was between `100/- to 150/- per day or `4500/- per month. In our view, the claim was honest and bonafide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the appellant from `4500/- to `3000/- per month. We, therefore, accept his statement that his monthly earning was `4500/-."

In the aforesaid judgment also the appellant was working as Coolie and the Tribunal has taken the income of the deceased as Rs.3,000/- per month, but the same was enhanced to Rs.4,500/- per month and that the claim petition therein was filed in the year 2004. In the instant case, the deceased was attending agricultural coolie work and admittedly accident took place in the year 2002 and the evidence to that effect accepted by the Tribunal. In view of aforesaid judgment, the income of the deceased, who was attending coolie work at the time of the accident, can be taken as Rs.4,500/- per month and Rs.54,000/- per annum. Since the deceased is aged 60 years, the deduction should be $\frac{1}{3}$ rd, as per the decision in **Sarla Verma v. Delhi Transport Corporation (supra)**. When the same is applied, it works out to Rs.3,000/- per month and Rs.36,000/- per annum towards loss of contribution to the petitioner. The Tribunal has taken the age of the deceased as 60 years and the multiplier as '5' as per the second schedule of the Motor Vehicles Act, But as per **Sarla Verma's case**, for the

age of the deceased, the relevant multiplier being '9'. The said view was also affirmed by the Hon'ble Supreme Court in **Amrit Bhanu Shali vs. National Insurance Co.Ltd.**,³. When applying the multiplier '9', considering the age of the deceased as 60, the amount works out to Rs.3,24,000/- (Rs.36,000/- x 9). The petitioner is also entitled to Rs.15,000/- towards loss of estate against Rs.2,500/- awarded by the Tribunal and Rs.15,000/- towards funeral expenses against Rs.2,000/- awarded by the Tribunal, as per the judgment of the Constitution Bench of the Supreme Court in **National Insurance Company Limited vs. Pranay Sethi**⁴. Thus, the petitioners are entitled to a total sum of Rs.3,54,000/- (Rs.3,24,000+Rs.15,000+Rs.15,000/-). So far as the interest is concerned, the Tribunal awarded 9% per annum on Rs.64,500/-, the same is not interfered with, since the claim was adjudicated in 2003, and that too, in the absence of any indication about the same being deviated from the prevailing rate of interest at the relevant point of time. However, the interest on enhanced amount shall be at the rate of 7.5% per annum from the date of petition till realization, as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and**

³ 2012 (6) ALD 2 (SC)⁴ 2017 ACJ 2700

others⁵. The claimant made a claim only for a sum of Rs.1,50,000/-. The Supreme Court in **Nagappa vs. Gurdayal Singh**⁶ 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 (supra), the appellant-claimant is awarded compensation of Rs.3,54,000/-. The claimant is required to pay the differential Court fee on the enhanced amounts as they have paid the Court fee on Rs.1,50,000/- only and the same may be deducted by Tribunal after enhanced compensation is deposited by respondents.

8. In the result, the appeal is allowed enhancing the compensation to Rs.3,54,000/- (Rupees three lakhs fifty four thousand only), with interest at 7.5% per annum on the enhanced amount from the date of petition till

⁵ 2013 ACJ 1403

⁶ 2002 AIR SCW 5348

realization. There shall be no order as to costs. The impugned award of the Tribunal in OP No.393 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.

A.RAJASHEKER REDDY, J

Dated: 16-03-2018.
kvs



HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY



MACMA No.914 of 2006

Date: 16.03.2018

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