

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2935 of 2007

JUDGMENT:-

Aggrieved by the grant of compensation of Rs.70,000/- as against a claim of Rs.3,00,000/-, vide common order, dated 29.08.2007, passed in O.P.No.185 of 2005, by the learned Chairman, Motor Accident Claims Tribunal-cum-II Additional District Judge, Kadapa at Proddatur ('the Tribunal', for brevity) the claimants preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 ('the Act', for brevity), seeking enhancement of compensation.

2. Heard the learned counsel for the appellants-claimants and perused the record. Despite listing this matter under the caption "For Orders", there is no representation for the sole respondent-APSRTC. This appeal is of the year 2007. Hence, this appeal can be disposed of basing on the material available on record, without waiting for the learned Standing Counsel for APSRTC to advance arguments.

3. The learned counsel for the appellants-claimants would contend that the deceased-Rathnamma is the mother of the appellants-claimants. She was 45 years old, working as a vegetable vendor and earning Rs.5,000/- per month as on the date of accident. The Tribunal granted a lump sum compensation of Rs.70,000/-, which is meagre. The subject accident was caused due to rash and negligent driving of the driver of the APSRTC bus bearing registration No.AP-11-Z-4073.

There was no rashness or negligence on the part of the driver of the lorry bearing registration No.AP-31-T-2303, in which the deceased was travelling and ultimately prayed to enhance the compensation as claimed.

4. To substantiate their claim that the subject accident occurred due to the rash and negligent driving of the driver of the APSRTC bus bearing registration No.AP-11-Z-4073, the appellants-claimants filed Ex.A.1-Copy of FIR in Cr.No.34 of 2005 of Muddanur Police Station, Ex.A.3-Copy of Post-mortem certificate of A.Rathnamma, Ex.A.4-Copy of Motor Vehicle Inspector's report and Ex.A.5-Copy of charge-sheet. No witness was examined to show rashness and negligence on the part of the other vehicle, viz., lorry bearing registration No.AP-31-T-2303. After analysing the aforementioned documentary evidence coupled with the oral evidence of P.W.1, the Tribunal held that the subject accident occurred due to the rash and negligent driving of the driver of the APSRTC bus bearing registration No.AP-11-Z-4073. The said finding of the Tribunal is based on the evidence on record and there is nothing to take a different view.

5. As far as grant of compensation is concerned, it is evident from the record that the Tribunal awarded lump sum compensation of Rs.70,000/- in favour of the appellants-claimants, without following the settled principles in assessing and awarding compensation, though the subject accident occurred on 02.06.2005. The earning capabilities in those days,

including future hike in the earnings, is required to be taken into consideration. The appellants-claimants have not led sufficient evidence to believe that the deceased was earning Rs.5,000/- per month. Even there is no acceptable evidence to show that the deceased was a vegetable vendor. Hence, the deceased can be considered as coolie. A coolie does not get work throughout the month. Having regard to the facts and circumstances, this Court deems it appropriate to take the monthly income of the deceased as Rs.2,000/-, i.e., Rs.24,000/- per annum (Rs.2,000/- x 12). If $\frac{1}{3}^{\text{rd}}$ is deducted from the same, the total loss of earnings would come to Rs.16,000/- (Rs.24,000/- minus $\frac{1}{3}^{\text{rd}}$). There is ample evidence on record to show that the deceased was 45 years old as on the date of accident. In view of the decision of the Apex court in case between Sarla Verma v. Delhi Transport Corporation¹, the appropriate multiplier applicable to the age of the deceased (45 years) is '14'. So, the total loss of dependency would come to Rs.2,24,000/- (Rs.16,000/- x 14). The appellants-claimants, who are son and daughter, are also entitled for Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. Thus, the appellants-claimants are entitled for a total compensation of Rs.2,54,000/- (Rs.2,24,000/- + Rs.15,000/- + Rs.15,000/-).

6. Accordingly, this appeal is allowed in part, modifying the common order, dated 29.08.2007, passed in O.P.No.185 of 2005 by the Tribunal, enhancing the compensation from Rs.70,000/- to Rs.2,54,000/- with interest at the rate of 7.5% per annum on

¹ AIR 2009 SC 3104

the enhanced amount of compensation from the date of petition till realisation. On deposit of the enhanced compensation, the appellants-claimants are permitted to withdraw the entire amount along with the interest accrued thereon. Other terms of the Order under challenge remain unaltered. The appellants-claimants are entitled for equal shares in the enhanced amount.

Miscellaneous petitions pending, if any, stand closed. No order as to costs.

Dr. SHAMEEM AKTHER, J

26th July, 2018
Bvv

