

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3554 OF 2005

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellants/claimants aggrieved by the grant of compensation of Rs.2,30,400/- with proportionate costs and interest at the rate of 6% per annum from the date of petition till the date of realisation as against a claim of Rs.7,50,000/-, by the learned Chairman, Motor Vehicles Accident Claims Tribunal – cum - District Judge, Guntur (for short, “the Tribunal”) *vide* order, dated 26.07.2005, passed in M.V.O.P.No.202 of 2001.

2. Heard the submissions of the learned counsel appearing for the appellants/claimants. Though the matter is posted under the caption “For Orders”, there is no representation for the respondent/Andhra Pradesh State Road Transport Corporation. The appeal pertains to the year 2005. So, it can be disposed of basing on the material available on record. Perused the material available on record.

3. Learned counsel for the appellants/claimants would contend that at the time of accident, the deceased Devalla Siva was 34 years old and working in a private cement factory earning Rs.6,000/- per month, but the Tribunal erroneously took his contribution to the family as Rs.2,400/-; that the Tribunal erroneously held that the deceased Devalla Siva was responsible for the occurrence of the accident to the extent of 50% and reduced 50% of the compensation assessed and ultimately, granted a compensation of Rs.2,30,400/- with proportionate costs and

interest at the rate of 6% per annum from the date of petition till the date of realisation as against a claim of Rs.7,50,000/- and the same is meagre, and ultimately, prayed to enhance the compensation and allow the appeal as prayed for.

4. In view of the submissions made by the learned counsel for the appellants, the points that arise for determination are:

“1. Whether the deceased Devalla Siva was negligent to an extent of 50% for occurrence of the subject accident? and

2. Whether the appellants/claimants are entitled for enhancement of compensation as prayed?”

5. **POINT No.1:-**

To substantiate the case of the claimants, P.Ws.1 to 3 were examined and Exs.A-1 to A-7 were got marked. On behalf of the respondent/A.P.S.R.T.C., R.W.1 was examined, but no documents were got marked.

6. Admittedly, P.W.1 is not an eye witness to the incident. P.W.2 is said to be the eye witness to the incident. In his cross examination, he stated that the accident occurred while the deceased Devalla Siva was crossing the road from one side to the other and that the deceased Devalla Siva did not observe the traffic. There is evidence of R.W.1 - Conductor of the offending R.T.C. Bus bearing No.AP.10Z-7857, who deposed about the occurrence of the subject accident on 19.01.2001 at 8:30 A.M. His evidence reveals that the bus was being driven slowly as there were three speed breakers on the road, and that a person came from the right side of the bus and when the bus was running, without observing the bus, dashed the bus and fell down. It is his specific

evidence that the bus was being driven slowly at that time. These aspects of the evidence were elaborately analysed and dealt with by the Tribunal. There is no reason to discard the evidence of R.W.1. There is also specific evidence of P.W.2 that the deceased Devalla Siva was crossing the road from one end to the other without observing the traffic. Under these circumstances, the Tribunal justified in holding that both the driver of the bus and the deceased Devalla Siva were equally responsible for the occurrence of the accident. There is nothing to take a different view.

7. **POINT No.2:-**

As per the Inquest panchanama under Ex.A-4, the deceased Devalla Siva was 35 years old at the time of accident. Though it is contended that the deceased Devalla Siva was a labourer in Durga Cement Factory and earning Rs.6,000/- per month, there is no legally acceptable evidence to substantiate the same. The Tribunal had taken contribution of the deceased to the family members at Rs.2,400/- per month. As the deceased Devalla Siva was 35 years old and the claimants are dependants on him, some hike is required to be taken into consideration. Therefore, the contribution of the deceased to the claimants is taken as Rs.3,000/- per month. The suitable multiplier for the age of "35" years is "16" as per **Sarla Verma v. Delhi Transport Corporation¹**'s case. The compensation towards loss of dependency is assessed as Rs.3,000/- x 12 x 16 = Rs.5,76,000/-.

¹ AIR 2009 SC 3104

8. It is apt to refer to the recent decision of the Apex Court in **National Insurance Co. Ltd., Vs. Pranay Sethi and others²**, wherein, it was held as follows:-

“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% in every three years.”

Taking into consideration the aforementioned decision of the Apex Court, this Court is inclined to grant Rs.40,000/- to the 1st appellant/1st claimant (wife) towards loss of consortium, Rs.15,000/- to the appellants/claimants towards loss of estate and another Rs.15,000/- towards funeral expenses. In all, the compensation payable to the claimants comes to Rs.6,46,000/- (i.e., Rs.5,76,000/- + Rs.70,000/-). As the deceased Devalla Siva was equally responsible for the occurrence of the subject accident, the compensation payable to the claimants comes to Rs.3,23,000/- (i.e., Rs.6,46,000/-/2). In all, the claimants are entitled for a sum of Rs.3,23,000/- (Rupees three lakhs twenty three thousand only) with interest at the rate of 7.5% per annum from the date of application till the date of realization on the entire amount of compensation.

9. Accordingly, this appeal is allowed in part modifying the order, dated 26.07.2005, passed in M.V.O.P.No.202 of 2001, by the Tribunal, enhancing the compensation from Rs.2,30,400/- to Rs.3,23,000/- with interest at the rate of 7.5% per annum from the date of application till the date of realization on the entire amount of compensation. On deposit of the enhanced

² 2017 (6) ALD 170 (SC)

compensation, the 1st appellant/1st claimant, who is the wife of the deceased Devalla Siva, is entitled for 50% of the same and interest thereon. The other appellants/claimants 2 to 4 are entitled to share the remaining enhanced amount and interest thereon equally. There is no change in the other conditions or directions imposed by the Tribunal. On deposit of the enhanced compensation, the appellants/claimants are permitted to withdraw the entire amount along with the accrued interest as indicated. There shall be no order as to costs.

10. Miscellaneous petitions pending, if any, in this appeal shall stand closed.

Date : 11.10.2018
AMD

DR.JUSTICE SHAMEEM AKTHER



THE HON'BLE DR.JUSTICE SHAMEEM AKTHER



M.A.C.M.A.No.3554 OF 2005

Date: 11.10.2018

AMD