

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.Nos.3065 of 2005 & 1713 of 2007

COMMON JUDGMENT:-

Since the order under challenge in both these appeals is one and the same, both these appeals are being disposed of by this common judgment.

2. Challenging the order dated 05.11.2003 passed in M.V.O.P.No.123 of 2002 by the Motor Accident Claims Tribunal-cum-Principal District Judge, Kurnool ('the Tribunal', for brevity), the KSRTC preferred M.A.C.M.A.No.3065 of 2005 seeking to set aside the impugned order and the claimants preferred M.A.C.M.A.No.1713 of 2007 seeking enhancement of compensation.

3. Heard the learned counsel for both sides and perused the record. For clarity and convenience, the parties are hereinafter referred to as per their array before the Tribunal.

4. The learned counsel for the claimants would contend that the Tribunal had granted the compensation of Rs.5,85,500/- against the claim of Rs.10,00,000/-. The Tribunal had not taken the agricultural income and other incomes of the deceased into consideration while awarding the compensation. The deceased was a practicing lawyer. The Tribunal had granted meagre amount towards conventional heads and ultimately, prayed to enhance the compensation.

5. On the other hand, the learned Standing Counsel for the RTC would contend that the deceased-G.Naresh Kumar Reddy was driving the jeep bearing No.AP-21/C 3744 at the time of accident. He was responsible for occurrence of the accident. The Tribunal erroneously fastened the liability against the KSRTC bus and its driver and granted excess compensation and ultimately, prayed to set aside the impugned order.

6. In view of the above rival contentions, the points that arise for determination in both these appeals are as follows:-

- 1) Whether the accident occurred due to the rash and negligent driving of the driver of KSRTC bus bearing No.KA-29/F 460 or whether the deceased-G.Naresh Kumar Reddy was responsible for the occurrence of accident?
- 2) Whether the compensation granted by the Tribunal is excessive or whether the claimants are entitled for enhancement of compensation ?

7. POINT No.1:- As per the evidence placed on record, the deceased-G.Naresh Kumar Reddy died in a motor accident that occurred on 25.08.2000 due to the rash and negligent driving of the driver of KSRTC bus bearing No.KA-29/F 460. P.W.2 said to be the eye witness to the occurrence of accident. He stated that the accident occurred due to the rash and negligent driving of the driver of the bus bearing No.KA-29/F 460. During the cross-examination, he reiterated the same.

8. Learned Standing counsel for the RTC contended that the accident occurred due to the rash and negligent driving of the deceased-G.Naresh Kumar Reddy i.e., driver of jeep bearing No.AP-21/C 3744, but did not choose to examine the driver of the

RTC bus or any other person, who witnessed the occurrence of accident. As per the entire criminal case record, i.e., Ex.A1-certified copy of FIR, Ex.A2-certified copy of inquest report and Ex.A3-certified copy of post-mortem report, the subject accident and death occurred due to the rash and negligent driving of the driver of RTC bus. Ex.A5 is the driving licence of the deceased-G.Naresh Kumar Reddy. The Tribunal while assigning reasons held that the accident occurred due to the rash and negligent driving of the driver of the RTC bus. The finding of the Tribunal is based on record. There is nothing to take a different view. Point No.1 is answered accordingly.

9. POINT No.2:- As per the evidence placed on record, the deceased was a practicing lawyer. Ex.A6 is the certificate issued by the Bar Council of Andhra Pradesh showing the registration of the deceased as a lawyer. The evidence of P.W.1-wife of the deceased is that the deceased was earning Rs.5,000/- per month from his profession. He was also doing agriculture and earning Rs.1,50,000/- per annum. He was also maintaining a jeep and his family owns a Tata Sumo and claimed a compensation of Rs.10,00,000/-. Though it is contended that the deceased having agricultural land, no document was filed to show the same. Further, Ex.A4 reveals that the deceased owned the jeep bearing No.AP-21/C 3744. Considering the same, the Tribunal had taken the monthly income of the deceased as Rs.4,000/- and after making necessary deductions, granted Rs.5,76,000/- towards loss of dependency. The Tribunal also granted Rs.2,000/- towards funeral expenses, Rs.2,500/- towards loss of estate and Rs.5,000/-

towards loss of consortium. In total, the Tribunal had granted Rs.5,85,500/- towards compensation. The Tribunal had granted meagre compensation on conventional heads as well as loss of dependency. When the deceased was a practicing lawyer and having a jeep, the Tribunal could have taken the monthly income of the deceased including future increase at Rs.5,000/-, which comes to Rs.60,000/- per annum. There were four dependents on the deceased. Hence, 1/4th is liable to be deducted towards personal expenses. After deducting 1/4th thereof towards personal expenses of the deceased, it comes to Rs.45,000/- as contribution to his family. As per the evidence placed on record, the age of the deceased was 29 years at the time of accident. Hence, as per the decision rendered in *Sarla Verma v. Delhi Transport Corporation*¹'s case, the appropriate multiplier to the age (29 years) of the deceased is '17'. After applying multiplier '17', the compensation for loss of dependency comes to Rs.7,65,000/- (Rs.45,000/- x 17).

10. Further, as per the decision of the Apex Court in *National Insurance Co. Ltd., Vs. Pranay Sethi and others*², the claimants are entitled for a sum of Rs.40,000/- towards loss of consortium, Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate and the same are accordingly awarded. In total, the claimants are entitled for a compensation of Rs.8,35,000/- (Rs.7,65,000/- + Rs.70,000/-) with interest @ 7.5% per annum on the enhanced compensation from the date of petition till the date of deposit.

¹ AIR 2009 SC 3104

² 2017 (6) ALD 170 (SC)

11. Accordingly, M.A.C.M.A.No.1713 is allowed in part modifying the order, dated 05.11.2003 passed by the Tribunal in M.V.O.P.No.123 of 2002, enhancing the compensation from Rs.5,85,500/- to Rs.8,35,000/- with interest @ 7.5% per annum on the enhanced amount of compensation from the date of petition till the date of deposit. The 1st claimant/wife is entitled for a sum of Rs.1,00,000/- out of the enhanced compensation. The 2nd claimant and respondents 1 and 2, who are the parents of the deceased-G.Naresh Kumar Reddy are entitled to share the remaining amount of enhanced compensation equally. On deposit of the enhanced compensation, the claimants are permitted to withdraw the same along with the interest accrued thereon, as per their apportionment. The other terms of the order under challenge remain unaltered. Consequently, M.A.C.M.A.No.3065 of 2005 filed by the KSRTC is dismissed.

Miscellaneous petitions, if any, pending in both these appeals, stand closed. No costs.

Dr. SHAMEEM AKTHER, J

Date: 10.09.2018
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