

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.2684 OF 2016

JUDGMENT:

Aggrieved by the award of compensation of Rs.5,58,000/- with interest at 7.5% per annum, by the order dated 16.07.2015 in M.O.P. No.550 of 2015, by the learned Chairman, Motor Accident Claims Tribunal - cum - X Additional District and Sessions Judge, Visakhapatnam, Anakapalle, the present Civil Miscellaneous Appeal is preferred, under Section 173 of the Motor Vehicles Act, 1988, by the erstwhile Andhra Pradesh State Road Transport Corporation, which is respondent No.2 in the said M.O.P.

2. Claimants in the above M.O.P. are respondent Nos.1 to 4 herein and respondent No.1, who is driver of the bus bearing No.AP-11-Z-6990 that involved in the accident, is respondent No.5 herein.

3. For the sake of convenience, 'respondent Nos.1 to 4' are referred to as 'claimants' and the 'appellant' as 'Corporation'.

4. The legal heirs of one Dudi Demullu, who died in a road accident on 29.11.2013 at 5.00 p.m., at Vummalada Junction, NH-16 Road, Anakapalle, Visakhapatnam District, while he was proceeding on a motor bike bearing No.AP-31-AK-9518 from Lakkavaram village to Kasimkota, and reached Vummalada Junction, NH-16 Road, Anakapalle, as pillion rider, when one Sanyasi Naidu was driving it, the Corporation bus driven by respondent No.5 in a rash and negligent

manner hit the motorbike, due to which, the said Sanyasi Naidu sustained injuries and was shifted to K.G. Hospital, Visakhapatnam, for treatment, whereas, Dudi Demullu succumbed to injuries on 30.11.2013.

5. According to the claimants, Dudi Demullu (hereinafter referred to as 'deceased') was working as a labourer and used to earn Rs.6,000/- per month and thus, they lost their bread earner, and, therefore, laid the claim for award of Rs.6,00,000/- under Section 166 Motor Vehicles Act read with Rule 455 of Andhra Pradesh Motor Vehicles Rules, 1989.

6. The driver of the Corporation bus remained *ex parte*.

7. The Corporation filed written statement resisting the request putting forth various pleas attributing rash and negligent driving to the driver of the motorbike, Sanyasi Naidu.

8. The Tribunal having framed three (3) issues and examining PWs.1 and 2, marking Exs.A-1 to A-5 on behalf of the claimants, and the driver and conductor as RWS.1 and 2 on behalf of respondent No.2, deliberated on issue No.1 and held that due to rash and negligent driving of RW.1, the accident occurred, and, accordingly, found the issue in favour of the petitioners.

9. On issue No.2, taking the age of the deceased as '49' years on the date of accident and Rs.4,500/- per month as earnings as against Rs.6,000/- claimed by the claimants, deducted 1/3rd towards

personal living expenses, and arrived at Rs.36,000/- per annum towards contribution of the deceased to his family and applied multiplier factor '13' as per the table formulated by the Hon'ble Apex court in **Sarla Verma v. Delhi Transport Corporation**¹, and arrived the loss of dependency at Rs.4,68,000/-. Besides the same, the Tribunal also awarded Rs.10,000/- towards funeral expenses, Rs.50,000/- towards consortium, Rs.30,000/- towards loss of love and affection, and, thus a total compensation of Rs.5,58,000/- was granted with interest at 7.5% per annum apportioning the same amongst claimant Nos.1 to 4 mulcting liability of Corporation and its driver joint and several to pay the compensation.

10. Heard Sri S.V. Ramana, learned counsel for the appellant - Corporation, and Smt. T.V. Sridevi, learned counsel for respondent Nos.1 to 4 - claimants, and perused the order under challenge including the material on record.

11. Though, the learned counsel for the Corporation would contend that there was rash and negligent driving on the part of the rider of the motorbike, due to which the accident occurred, and that income taken by the Tribunal was without any proof and multiplier factor '13' is not applicable, but, none of these submissions, when examined in the light of the evidence on record, and the legal principles laid down by the Hon'ble Apex Court, would merit.

¹ 2009 (6) SCC 121

12. The learned counsel for the claimants would submit that the amounts granted by the Tribunal support the order passed by the Tribunal.

13. The following points would emerge for consideration:

1. Whether the contributory negligence attributed by the Corporation is proved?
2. Whether the order under challenge warrants interference?

POINT No.1:

14. The evidence let in by the Corporation through RWs.1 and 2, who are driver and conductor, were appreciated by the Tribunal and arrived at the view that it cannot gain precedence over the documentary evidence under Exs.A-1 to A-5 by assigning the reason that the driver of the bus just came as a witness without contesting the claim by filing a proper counter, and thereby, held the issue against the Corporation. Even on examination of material on record, it is clear that RW.1, who was the driver of the bus, being a party to the claim petition, did not choose to file his pleadings refuting the allegations, more particularly, the allegation of rash and negligent driving attributed to him or that there was no negligence on his part and due to rash and negligent driving of Sanyasi Naidu, who was riding the motorbike, the accident had occurred. Besides the same, the investigation done by the Corporation would only show that due to rash and negligent driving of its driver, RW.1, accident had occurred.

Hence, the Tribunal rightly held that due to rash and negligent driving of respondent No.5, driver of the Corporation bus, the accident had occurred, and, therefore, does not warrant interference.

15. On determination of compensation, it is difficult to get documentary proof as to the earnings of the deceased, who was admittedly a labourer. His income was put at Rs.150/- per day, and PW.2's evidence is available on record, who would assert that the deceased was earning Rs.6,000/- per month. Certainly, the Tribunal has not gone wrong in fixing the income of the deceased at Rs.4,500/- per month, since the accident took place in the year 2013 and it cannot be said that the daily wage of a labourer during that time was less than Rs.150/-.

16. So far as the age of the deceased is concerned, he was 45 years, and, therefore, the multiplier factor '13' is rightly applied by the Tribunal based on the table formulated by the Hon'ble Apex Court in **Sarla Verma's Case**¹. The deduction ought not to be 1/3rd, but ought to be 1/4th, but the claimants have not chosen to file any cross-objection, and, therefore, it is difficult now to interfere with determination of loss of dependency arrived at by the Tribunal.

17. So far as funeral expenses are concerned, the Tribunal awarded Rs.10,000/-. Hence, the same is confirmed. Even in **National Insurance Co. Ltd. V. Pranay Sethi**², a Constitutional Bench of the Hon'ble Supreme Court declared that reasonable figures

under conventional heads viz., loss to estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The Tribunal granted Rs.50,000/- towards loss of consortium, but they are entitled to Rs.40,000/- only in view of the law declared by the Hon'ble Supreme Court in **Pranay Sethi's Case**². Therefore, the amount of Rs.50,000/- awarded by the Tribunal towards consortium is reduced to Rs.40,000/-.

18. The Tribunal has awarded a sum of Rs.30,000/- towards loss of love and affection. The said head is not provided under conventional heads by the Hon'ble Supreme Court in **Pranay Sethi's Case**². Hence, the claimants are not entitled to the said amount.

19. Thus, towards conventional sums, the claimants are entitled to Rs.10,000/- and Rs.40,000/-, put together a sum of Rs.50,000/- as against Rs.90,000/- awarded by the Tribunal.

20. Therefore, the claimants are entitled total compensation of Rs.5,18,000/- (Rupees five lakhs eighteen thousand only) as against Rs.5,58,000/- granted by the Tribunal with interest at 7.5% per annum as granted by the Tribunal.

21. Accordingly, the Civil Miscellaneous Appeal is allowed in part reducing the compensation as indicated above. There shall be no order as to costs.

² 2017ACJ 2700

As a sequel thereto, Miscellaneous Applications, if any, pending in the present civil miscellaneous appeal stand closed.

A. SHANKAR NARAYANA, J

April 9, 2018.

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