

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.639 OF 2011

JUDGMENT:

Appellants-claimants filed this appeal against the award and decree dated 29.06.2009 passed in M.V.O.P.No.875 of 2007 by the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-I Additional District Judge, Guntur, granting compensation of Rs.1,79,500/- as against the claim of Rs.3,00,000/-, for the death of the deceased-Vasimalla Srinivasa Rao in the motor accident occurred on 04.07.2007.

The appellants-claimants filed claim petition under Section 163-A of M.V. Act alleging that on 04.07.2007 while the deceased and another were going on TVS moped from Ongole to Maddiralapadu Village of Prakasam District, at about 12.45 p.m. when they reached Tavagunta Cheruvu in Ongole Mandal, one APSRTC bus bearing No.AP-10-Z-7351 came in opposite direction at high speed and dashed against the moped, due to which the deceased and another fell on the road and sustained injuries. He was immediately shifted to Government General Hospital, Ongole. But, the deceased succumbed to injuries on the way to hospital. Ongole Taluk Police registered a case in crime No.318/2007 against the driver of the offending bus. The investigation disclosed that the accident occurred due to the rash and negligent driving of the RTC bus by its driver. It is further stated that the deceased was hale and healthy at the time of accident and used to earn Rs.3,000/- per month by working as a helper in SVS Cable Net Work, Bapatla.

Respondent filed a counter denying the averments of the petition and stated that due to rash and negligent driving on the part of the deceased, the accident was occurred.

Based on the above pleadings, the Tribunal framed the following issues for its consideration:

- 1) Whether the accident took place due to rash and negligent driving of the driver of the APSRTC bus bearing Regd. No.AP 10-Z-7351?
- 2) Whether the petitioners are entitled to compensation, if so, what amount and against whom?
- 3) To what relief?

On behalf of the claimants, PWs 1 and 2 were examined and Exs.A.1 to A.5 were got marked. On behalf of the respondent, no oral and documentary evidence was adduced.

The Tribunal based on the evidence of PW-2 B.Jaypal, who is the eye witness to the accident, and based on Ex.A.5-certified copy of charge sheet, came to the conclusion that the accident occurred due to the involvement of the bus and accordingly answered issue No.1 in favour of the claimants. Further, the Tribunal based on the evidence of P.W.1 and Ex.A.3-certified copy of post-mortem report, came to the conclusion that the deceased was aged 24 years. However, the Tribunal has rejected the claim of the appellants that the deceased used to earn Rs.3,000/- per month by working as helper in SVS Cable New Work, Bapatla, in the absence of supporting documents. Having disbelieved the claim of the appellants with regard to the income of the deceased, the Tribunal has taken the notional annual income of the deceased as Rs.15,000/- per annum. After deducting 1/3rd therefrom towards personal expenses and applying the multiplier of '17', as the deceased was aged 24 years at the time of accident, the Tribunal

has arrived the loss of dependency as Rs.1,70,000/-. In addition, the Tribunal has granted Rs.2,000/- towards funeral expenses, Rs.2,500/- towards loss of estate and Rs.5,000/- towards loss of consortium to the second appellant. Thus, in total, the Tribunal has granted Rs.1,79,500/- towards compensation along with costs and interest @ 7.5% per annum. Not being satisfied with the quantum of compensation awarded by the Tribunal, the present appeal came to be filed by the appellants-claimants seeking enhancement of the compensation.

Learned counsel for the appellants would contend that the Tribunal has grossly erred in treating the deceased as a non-earning member of the family *in spite* of the deceased being married and having a minor child and without assigning any reason the Tribunal disbelieved the claim of the appellants that the deceased used to earn Rs.3,000/- per month by working as helper in SVS Cable Net Work. He would further contend that the Tribunal ought to have granted interest @ 9% per annum instead of 7.5% per annum. Further, the Tribunal ought to have granted Rs.15,000/- towards loss of estate in stead of Rs.2,000/-, in view of the ratio laid down by the Hon'ble Supreme Court in ***National Insurance Company Limited vs. Pranay Sethi and others***¹. The Tribunal also erred in granting Rs.5,000/- towards loss of consortium instead of granting Rs.15,000/- as per the ratio laid down in ***Pranay Sethi (1 supra)***. Hence, he seeks enhancement of the compensation.

Per contra, Sri P.Durga Prasad, learned counsel for the respondent-Corporation, would contend that the appellants made

¹ 2017 Law Suit (SC) 1093

claim under Section 163-A of the Motor Vehicles Act, 1988, under which the claimants are entitled for structural compensation under Schedule-II to Section 163-A of the M.V.Act. As the appellants failed to prove income of the deceased, the Tribunal has rightly taken the notional income of the deceased as Rs.15,000/- per annum. The Tribunal has awarded the total compensation of Rs.1,79,500/-, which cannot be said to be meagre and contrary to the evidence available on record. The appeal is misconceived and liable to be dismissed.

Having perused the material on record, this Court finds that the Tribunal based on the evidence of the eye witness to the accident i.e. P.W.2 and Exs.A.1 to A.5 held that the death of the deceased was due to involvement of the offending bus in the accident and the offending vehicle was driven in rash and negligent manner by its driver. Except merely alleging in counter affidavit that the accident was occurred due to the rash and negligent driving of the deceased, the respondents failed to adduce any evidence to prove the same. Hence, the Tribunal has rightly held issue No.1 in favour of the appellants and this Court finds no reason to interfere with the said finding.

The Tribunal on erroneous appreciation of facts and circumstances of the case concluded that the deceased was a non-earning member of his family. The Tribunal has not assigned any reasons to disbelieve the claim of the appellants that the deceased used to earn Rs.3,000/- per month by working as a helper in SVS Cable Net Work, Bapatla, except merely stating that the appellants could not able to produce any documents establishing the income of the deceased. There is no reason for the Tribunal to disbelieve

the version of the appellants and take a nominal amount of Rs.15,000/- towards notional annual income of the deceased. The Tribunal ought to have seen and considered that the appellants being aged father and widowed wife of the deceased, it would be difficult for them to get the salary certificate of the deceased. Hence, this Court is of the view that it is just and reasonable to take the income of the deceased as Rs.3,000/- per month and Rs.36,000/- per annum. If 1/3rd is deducted therefrom towards personal expenses, the annual contribution of the deceased to his family would be Rs.24,000/-. After applying the multiplier '17' as rightly taken by the Tribunal as the deceased was aged 24 years at the time of his death in the accident, the appellants are entitled for Rs.4,08,000/-. The amounts granted by the Tribunal under other heads i.e. Rs.2,000/- towards funeral expenses, Rs.2,500/- to the claimants towards loss of estate and Rs.5,000/- towards loss of consortium, are contrary to the judgment of the Hon'ble Supreme Court in **Pranay Sethi (1 supra)** and the appellants are entitled for Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate and Rs.40,000/- towards loss of consortium. Accordingly, the compensation amount granted by the Tribunal of Rs.1,79,500/- is enhanced to Rs.4,78,000/- along with costs and interest @ 7.5% per annum from the date of petition till the date of realization, as ordered by the Tribunal.

Though the compensation claimed by the claimants before the Tribunal was only Rs.3,00,000/-, in view of the decision of the Hon'ble Supreme Court in **Nagappa vs. Gurudayal Singh and others²**, in M.V.Act there is no restriction that the compensation

² (2003) 2 SCC 274

should be awarded only upto the claim made by the claimants. Hence, the compensation awarded by the Tribunal is enhanced to Rs.4,78,000/-. However, the appellants-claimants shall pay the difference of Court Fee for the excess amount of Rs.1,78,000/-. Out of the total compensation of Rs.4,78,000/-, the first and second claimants-mother and wife of the deceased respectively are entitled for Rs.1,50,000/- each with proportionate costs and interest and the third claimant-minor daughter of the deceased is entitled for Rs.1,78,000/- with proportionate interest. The entire compensation amount, duly deducting the amounts already deposited, if any, shall be deposited to the credit of the O.P. before the Tribunal by the respondents within a period of one month from the date of receipt of a copy of this order. On such deposit, appellants 1 and 2 are entitled to withdraw their respective share amounts, subject to payment of excess Court Fee. However, the share amount of minor claimant shall be kept in fixed deposit in any nationalized bank till she attains majority.

Accordingly, the appeal is allowed to the extent indicated above.

Miscellaneous petitions pending in this appeal, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

30.10.2018
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