

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

MACMA No. 313 OF 2012

Judgment:

This appeal is filed by the APSRTC being aggrieved by the award and decree dated 08.09.2011 passed in MVOP No.75 of 2009 by the Additional Chairman, Motor Accidents Claims Tribunal-cum-XX Additional Chief Judge, City Civil Court, at Secunderabad.

2. The appellant herein is the respondent and the respondents herein are the petitioners before the Tribunal. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the Original Petition.

3. The facts, in brief, are that on 30.08.2008 the deceased G. Ramulu was going to his house and when he reached near Gandhi Statute, Manchirevula Cross Roads, at about 1.20 PM, an RTC bus bearing registration No.AP 9Z 9428 which was coming from Gandipet side in a rash and negligent manner at high speed dashed the deceased G. Ramulu due to which he sustained head injuries and died on the spot; a case in Crime No.232 of 2008, under Section 304A IPC, was registered by the Narsingi Police against the driver of the RTC bus; the deceased was aged about 30 years as on the date of accident and he was doing centring work and earning Rs.4,500/- per month; petitioner No.1 is the wife, petitioners 2 and 3 are minor children and petitioners 4 and 5 are the parents of the deceased; the deceased was the only bread earner of the petitioners family and on account of his death they suffered great hardship for minimum necessities of life. Hence, they claimed an amount of Rs.6,00,000/- towards compensation for the death of the deceased.

4. The respondent – APSRTC filed written statement denying the averments made in the claim petition and alleging that the driver of the bus is not responsible for the accident and hence the petitioners are not entitled for any compensation.

5. The Tribunal, based on the above pleadings, framed three issues. On behalf of the petitioner PWs.1 and 2 were examined and Exs.A1 to A5 were marked. On behalf of the respondent, none were examined and no documents were marked.

6. The Tribunal, on issue No.1, based on the evidence of PWs.1 and 2 coupled with Exs.A1 to A5 held that due to rash and negligent driving of the driver of the APSRTC bus the accident took place. On issue No.2, the Tribunal taking the income of the deceased at Rs.100/- per day, which comes to Rs.36,000/- per annum, deducted 1/4th towards his personal expenses, as there are five dependents in this case, and after applying the multiplier '18' taking the age of the deceased as 30 years, estimated the loss of dependency at Rs.4,86,000/- (Rs.27,000/- x 18). The Tribunal also awarded Rs.1,000/- towards transport charges, Rs.1,000/- towards damages to clothing and articles, Rs.5,000/- towards funeral expenses and Rs.5,000/- towards pain and suffering. Thus, in all, the Tribunal awarded Rs.4,98,000/- towards compensation with interest at 7% p.a., from the date of petition till deposit. Aggrieved by the same, the respondent – APSRTC filed the present appeal.

7. Heard learned Standing Counsel for the appellant – APSRTC and learned counsel for the respondents/claimants.

8. Learned Standing Counsel for the appellant submits that there was no negligence on the part of the driver of the RTC bus and that the deceased alone is responsible for the accident. He further submits that

the Tribunal applied the multiplier '18' instead of applying the multiplier '17' and since the deceased died on the spot the Tribunal erred in granting Rs.5,000/- towards pain and suffering.

9. On the other hand, learned counsel for the respondents/claimants submits that the evidence of PWs.1 and 2 coupled with Exs.A1 to A5 amply prove the negligence on the part of the driver of the RTC bus and the Tribunal, after appreciating the entire oral and documentary evidence on record, granted the compensation which needs no interference.

10. Though the learned Standing Counsel for the appellant submits that there was no negligence on the part of the driver of the RTC bus and the deceased alone was responsible for the accident, on a perusal of Exs.A1 to A5 coupled with the evidence of PWs.1 and 2 clearly shows that at the time of accident the deceased was about to cross the road and standing at the left side of the road and in the meantime the RTC bus which was coming from Gandipet side towards Langer house side in a rash and negligent manner at high speed dashed the deceased due to which he fell down on the road and the wheel of the bus ran over him and the driver of the RTC bus fled away from the scene of offence by leaving the bus. In the circumstances, the contention of the learned Standing Counsel for the appellant cannot be countenanced and the finding recorded by the Tribunal on issue No.1 cannot be interfered with.

11. Coming to the compensation amount awarded, the Tribunal taking the income of the deceased at Rs.100/- per day, which comes to Rs.36,000/- per annum, deducted 1/4th towards his personal expenses, as there are five dependents in this case, and after applying the multiplier '18' taking the age of the deceased as 30 years, estimated the loss of dependency at Rs.4,86,000/- (Rs.27,000/- x 18). But, as per the decision

of *Sarla Verma v. Delhi Transport Corporation*¹, the appropriate multiplier to be applied for the age group of 26 to 30 is '17' and if the same is applied, the loss of dependency would come to Rs.4,59,000/-. The Tribunal also awarded Rs.1,000/- towards transport charges, Rs.1,000/- towards damages to clothing and articles, Rs.5,000/- towards funeral expenses and Rs.5,000/- towards pain and suffering and the same are maintained. Though the contention of the learned Standing Counsel for the appellant is that since the deceased died on the spot, the Tribunal ought not to have awarded Rs.5,000/- towards pain and suffering, but the contention of the learned counsel for the claimants is that the said amount may be awarded towards pain and suffering undergone by the parents of the deceased and they are also entitled for future prospects, loss of consortium to the wife of the deceased and loss of love and affection to the minor children. The respondents/claimants did not file any appeal or cross objections seeking enhancement of compensation, hence the same cannot be granted in the appeal filed by the APSRTC. However, in view of the submission made by the learned Standing Counsel for the appellant that no amount be granted towards pain and suffering, the amount of Rs.5,000/- granted by the Tribunal towards pain and suffering can be treated as the amount granted towards loss of consortium to the wife of the deceased and loss of love and affection to the minor children. Having regard to the facts and circumstances of the case, the amount granted by the Tribunal is reduced from Rs.4,98,000/- to Rs.4,71,000/-.

¹ (2009) 6 SCC 121

12. Accordingly, the MACMA is partly allowed reducing the compensation amount from Rs.4,98,000/- to Rs.4,71,000/- with interest at 7% from the date of petition till realization. There shall be no order as to costs.

13. As a sequel thereto, the Miscellaneous Applications, if any, pending in this appeal shall stand closed.

KONGARA VIJAYA LAKSHMI, J

Date: 12th October 2018
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THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI



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Nsr