

HON'BLE SRI JUSTICE N.BALAYOGI

M.A.C.M.A. No.1072 of 2008

ORDER:

The appellants/claimants, aggrieved by the award and decree dated 02.12.1999 in O.P.No.193 of 1996 on the file of the II Additional Motor Accidents Claim Tribunal-cum-II Additional District and Sessions Judge, Nellore, preferred this appeal.

2. The contention of the appellants is that, the Trial Court ought to have taken into consideration the income mentioned in Ex.A.5, but, atleast, the income of an agriculturist at Rs.3,000/- p.m. and the Trial Court erroneously took the income of the deceased at Rs.750/- p.m. He further contended that the Trial Court also did not consider the agricultural income of the deceased. He further contended that the Trial Court ought to have awarded funeral expenses at Rs.5,000/- and loss of consortium at Rs.15,000/-.

3. Per contra, learned counsel for respondent No.2 contended that the Trial Court rightly considered the monthly income of the deceased and awarded reasonable amount which does not suffer from any legal infirmities warranting interference of this Court.

4. In view of the rival contentions, the point that arises for determination is whether the award and decree of the Trial

Court, in O.P.No.193 of 1996 dated 02.12.1999, suffered from legal infirmity warranting interference.

5. Appellant Nos.1 and 2 are the wife and minor daughter and appellant Nos.3 and 4 are the parents of the deceased.

6. On 26.01.1996, while the deceased was travelling in APSRTC bus bearing No.AP 9Z 7776 from Nellore towards Podalakur and, when the bus was reached Ambapuram and Amancherla Village, a tipper bearing No.AP 26T 6918 came in the opposite direction with high speed in a rash and negligent manner on the extreme right side of the bus and hit the rear portion of the bus near Emergency Door and the deceased who was sitting on the rear side of the bus received grievous injuries and died on the spot.

7. Respondent No.1 filed counter and opposed the claim. He contended that the driver of the tipper was not at fault and the bus driver alone was responsible for the accident. He further contended that, while the tipper was going to Nellore, the RTC bus came at high speed in the opposite direction and in order to avert the sheep going in front of the bus, the bus driver swerved the bus to the extreme left side of the road and, in that process, the rear portion of the bus went to the middle of the road and came into contact with the tipper

and, thus, the bus driver alone was responsible for the accident.

8. Respondent No.2 filed counter and contended that tipper was insured with respondent No.2 and there is no negligence on the part of the driver of the tipper. It was further contended that the tipper driver had no valid driving licence.

9. Respondent No.3 –APSRTC, by filing counter, contended that the bus driver was not responsible for the accident.

10. The Trial Court, upon hearing and considering the claim of the petitioners, and also the respondents, settled the following issues for consideration:

1. Whether the alleged accident occurred due to the rash and negligent driving of the motor vehicle bearing No.AP 26 T 6918 by its driver?
2. Whether the petitioner is entitled to any compensation and, if so, to what amount and from which of the respondents?
3. To what relief?

11. Since this is an appeal filed by the claimants, they have not disputed the finding with regard to the rash and negligence of the driver of the tipper and they are only disputing the quantum of compensation awarded.

12. The Trial Court, having considered the evidence of PW.1, came to the right conclusion that the claimants – petitioners are the wife, daughter and parents of the deceased Chennammagari Venkata Reddy.

13. Ex.A.1 - Certified copy of FIR; Ex.A.2 - Certified copy of charge sheet in C.C.No.113 of 1996; and Ex.A.4 is the Motor Vehicle Inspector's report.

14. PW.1 is admittedly not an eye-witness to the accident. Therefore, the claimants examined the passenger of the bus in which the deceased was travelling at the time of accident as PW.2. PW.2 is shown as third witness in Ex.A.2, list of witnesses. Therefore, PW.2 is an eye-witness to the accident.

15. The consistent evidence of PW.2 is that when the bus reached near Podalakur Road, a tipper came in the opposite direction at high speed and, while crossing the bus, the tipper dashed the middle portion of the bus on the right side and the accident occurred due to the rash and negligent driving of the driver of the tipper. He further stated that, at the time of accident, the bus driver was driving slowly and he was sitting in the extreme right back seat and one person who was sitting three seat in front of him sustained injuries and died on the spot. During cross-examination, PW.2 specifically stated that he observed the offending tipper from a distance of 20 mts. and denied the suggestion that, on seeing the tipper, the bus driver tried to get down to the road margin and, in the process, the back portion of the bus came to the middle of the road and while the tipper driver tried to avoid the bus, the back portion of the tipper came into contact with back portion

of the bus, due to which the accident occurred and there was no fault of tipper driver in the accident.

16. Ex.A.1 is the complaint lodged by the co-passenger, U. Hari Prasad, wherein it is specifically asserted that the accident was due to rash and negligent driving of the driver of the tipper. The Investigating Officer, after completion of investigation, filed charge sheet against the driver of the tipper who drove in a rash and negligent manner with high speed and dashed the RTC bus bearing No.AP 9Z 7776 on its right side emergency door upto the end of the back portion by removing the body aluminium sheets resulting injuries to some of the passengers and one person died on the spot.

17. The Motor Vehicle Inspector, who inspected the vehicle, issued Ex.A.4 – MVI report who clearly opined that the accident was not due to any mechanical defects of the tipper.

18. The conductor of the bus was examined as RW.1, who corroborated the evidence of PW.2 in all respects. The Trial Court having considered the evidence of PW.1 and documents Exs.A.1, A.2 and A.4 came to the right conclusion that the accident was due to the rash and negligent driving of the driver of the tipper. Respondents having taken the plea that there was negligence on the part of the driver of the bus, they did not choose to enter into the witness box and rebut the ocular evidence of PWs.1 and 2 and documentary evidence Exs.A.1 to

A.5. In the absence of rebuttal evidence, I am of the considered view that the finding of the Trial Court that the accident was due to the rash and negligent driving of the driver of the tipper does not suffer from any legal infirmity warranting interference.

19. With regard to the age and income of the deceased, there is evidence of PW.1 and Ex.A.5 – Certificate issued by the Mandal Revenue Officer. The evidence of PW.1 is that the deceased was cultivating Ac.4.70 cents of land, besides doing lemon business earning Rs.25,000/- to Rs.30,000/- p.a. Ex.A.5 is the Certificate issued by the Mandal Revenue Officer which shows that the first claimant – wife of the deceased owned Ac.4.70 cents of land. The evidence of PW.1 is that, after the death of her husband, the lands were kept idle, as her father-in-law was old and unable to cultivate land, and they lost income from the agricultural lands. To prove Ex.A.5, Mandal Revenue Officer, was not examined. The Trial Court have taken the monthly income of the deceased at Rs.750/- and even an agricultural coolie would not be getting less than Rs.50 /- per day which comes to Rs.1,500/- p.m. as on the date of accident i.e. 26.01.1996. Therefore, the conclusion of the Trial Court that the deceased was earning Rs.750/- is erroneous and it has to be modified.

20. With regard to the age of the deceased, no documentary proof is produced. In Ex.A.1 – FIR and Ex.A.3 –

Inquest Report, the age of the deceased was mentioned as 25 years.

21. As per the judgment in **Sarla Verma v. Delhi Transport Corporation**¹, for the age group between 21 to 25 years, the appropriate multiplier is '18'. Taking into consideration the age of deceased as 25 years, the multiplier applicable is '18'. Since the dependents are 4, 1/4th has to be deducted towards personal expenses, had he been alive. Taking the monthly income at Rs.1,500/- p.m, the annual income comes to Rs.18,000/-. After deducting 1/4th towards personal expenses, the contribution to the family would come to Rs.13,500/-. By applying multiplier 18, the loss of dependency can be assessed at Rs.2,43,000/- (Rs.13,500 x '18'). Further, the Tribunal awarded Rs.2,000/- towards funeral expenses; which do not warrant interference. However, the compensation awarded by the Tribunal at Rs.5,000/- towards loss consortium and Rs.2,500/- towards loss of estate are on lower side. Considering, the decisions of the Apex Court, it is just and reasonable to award compensation towards loss of consortium and loss of estate at Rs.15,000/- and Rs.5,000/- respectively. The total compensation can be awarded at Rs.2,65,000/-

22. The Apex Court in **Nagappa vs. Gurudayal Singh**² held that there is no restriction that compensation could be

¹ AIR 2009 SC 3104

² 2003 (1) ALD 1 (SC)

awarded only up to the amount claimed by the claimants and in appropriate cases wherefrom the evidence brought on record, if the Tribunal/Court considers that the claimant is entitled to get more compensation than claimed, the Tribunal/Court may pass such award. Further it is to be seen that the loss caused to the family on the death of a near and dear one can hardly be compensated in monetary terms. Section 168 of the Act uses the word 'just compensation' which, in my opinion, should be assigned a broad meaning and that if some facilities are being provided whereby the entire family stands to benefit, the same, in our opinion, must be held to be relevant for the purpose of computation of total income on the basis whereof the amount of compensation payable for the death of the kith and kin of the applicants is required to be determined. In view of the aforesaid decision and having considered the evidence brought on record in the case on hand, the claimants are entitled to receive compensation of Rs, 2,65,000/-.

23. Accordingly the appeal is allowed with costs while setting aside and modifying the award and decree dated 02.12.1999 in O.P.No.193 of 1996 on the file of the II Additional Motor Accidents Claim Tribunal-cum-II Additional District and Sessions Judge, Nellore. Consequently the appellants/claimants are entitled to be awarded total compensation of Rs.2,65,000/-.

24. The first respondent being the owner of tipper bearing No.AP 26T 6918 and second respondent being insurer are jointly and severally liable to pay the compensation awarded hereinabove. Accordingly, they shall deposit the compensation amount awarded hereinabove within a period of one month from the date of receipt of a copy of this judgment.

25. The amount of compensation awarded hereinabove is apportioned among the appellants/claimants as under:

Appellant No.1	: Rs.1,05,000/-
Appellant No.2	: Rs.1,00,000/-
Appellant No.3	: Rs. 30,000/-
Appellant No.4	: Rs. 30,000/-

26. On such deposit being made by respondent Nos.1 and 2, the first, third and fourth appellants are permitted to withdraw their share amounts as indicated hereinabove. The amount of compensation awarded to appellant No.2, who being a minor, shall be kept in a Fixed Deposit of any nationalised bank till she attains majority. After attaining the majority, she is permitted to withdraw her share amount according to her need and necessity, by filing necessary application before the Tribunal.

27. The appellants/claimants are directed to pay deficit court fee on the amount awarded exceeding the claim amount within thirty days from the date of receipt of a copy of this judgment.

28. Advocate fee is fixed at Rs.2,500/-.

29. Miscellaneous Petitions, if any, pending in this appeal shall stand dismissed.

N.BALAYOGI,J

Dt:29.11.2018
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