

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MRS. JUSTICE T.RAJANI

M.A.C.M.A.No. 314 of 2013

JUDGMENT:

The present appeal came to be filed under Section 173 of Motor Vehicles Act, challenging the order dated 29.10.2009 passed in M.V.O.P.No. 229 of 2005 passed by the Motor Accident Claims Tribunal-cum-III Additional District Judge, Srikakulam.

2. For the sake of convenience, the parties will hereinafter be referred to as arrayed in the O.P.

3. The claimants herein filed a petition under Section 166 of Motor Vehicles Act, 1988 read with Rule 455 of the A.P.Motor Vehicle Rules against the Andhra Pradesh State Road Transport Corporation (A.P.S.R.T.C), claiming compensation of Rs.50,00,000/- with interest and costs, for the death of Avinash Agarwal, S/o. Naresh Kumar Agarwal, in a motor vehicle accident that occurred on 14.08.2003 at about 06.10 p.m., near LIC Buildings, Visakhapatnam.

4. The 1st claimant is the father, while the 2nd claimant is the mother of the deceased. The 1st respondent is the owner of A.P.S.R.T.C. bus, while the 2nd respondent is the Depot Manager, A.P.S.R.T.C., Smhachalam, Visakhapatnam district.

5. The facts in issue, are as under:

On 14.08.2003, at about 06.10 p.m., while the deceased was going to his friend's house in Daba Gardens, on his Suzuki Fiero Motor Cycle, bearing No. AP 32C 9567, and when he reached LIC Buildings, an RTC bus bearing No. AP 11 Z 0474, driven by its driver in a rash and negligent manner, dashed against the motor cycle of the deceased, as a result of which, the deceased fell down and sustained multiple injuries. Immediately, he was admitted in K.G. Hospital, Visakhapatnam, and later, shifted to Care Hospital for better treatment. It is stated that inspite of best efforts, the deceased/ injured died. Accordingly, a case in Crime No. 64 of 2003 came to be registered for the offence punishable under Section 338 IPC, which was subsequently altered to 304(A) IPC.

6. Since the deceased is the only son to his old aged parents, the present application came to be filed seeking compensation of Rs.50,00,000/-.

7. The 1st respondent-Corporation filed a written statement, denying the material averments in the petition and putting the petitioners to strict proof of all the petition averments. The 2nd respondent filed his memo adopting the arguments of the 1st respondent.

8. Basing on the pleadings in the petition and written statement, the claims tribunal framed the following issues:

1. Whether the accident occurred due to rash and negligent driving of the driver of APS RTC bus bearing No. AP 11/ 474 resulting in the death of Avinash Agarwal?

2. Whether the petitioners are entitled to claim compensation? If so to what amount and from which of the respondents?
9. In order to prove their claim, the claimants examined PW1 and got marked Exs.A1 to A17. The respondents examined RW1 and RW2, but, no documents came to be marked.
10. Considering the evidence on record, the claims tribunal awarded compensation of Rs.3,46,000/- in favour of the petitioners 1 and 2 and against the respondents with simple interest @ 7.5% per annum from the date of petition till date of realization. Challenging the same, the present appeal came to be filed by the claimants seeking enhancement of the compensation.
11. The fact that the accident took place due to rash and negligent driving by the driver of the R.T.C. bus, has become final, since no appeal is filed by the R.T.C. questioning the manner in which the accident took place. The only issue that requires to be considered is the quantum of compensation.
12. Learned Standing Counsel for APSRTC would contend that the income of the deceased and the multiplier adopted by the respondent are just and proper, and that the petitioners are not entitled to any enhancement in the compensation. The same is disputed by the learned counsel for the appellants. On the other hand, his plea is that the accused are entitled to more than what has been awarded.

13. The only question that arises for consideration is whether the quantum of compensation awarded to the claimants is justified.

14. Learned counsel for the appellant would contend that though the father of the deceased is a renowned and respectable person with good background and also once elected as M.L.A., while the mother of the deceased is an advocate with very good practice. There is no evidence with regard to the earning of the parents of the deceased. In view of the above, this finding of the trial court that there was no loss in dependency, cannot be accepted. It may be true that the father of the deceased was once upon a time as M.L.A., but that does not by itself mean that he was not dependent on the son. There is no evidence on record to show that he had sufficient source of income making him independent and not depending on the deceased. Except stating that the mother of the deceased was an advocate and having very good practice, no evidence is placed on record with regard to the nature of work she was doing and the amount which she was earning as a lawyer. Therefore, just making an averment that the deceased was from a family, may not be sufficient to deny them compensation on the ground of loss of dependency.

15. Admittedly, the deceased was a bachelor at the time of accident, which has come on record through the evidence of PW1. This fact is not in dispute. It is also not in dispute that the deceased was studying II Year B.Tech. in ANITS College of

Engineering in Visakhapatnam, at the time of accident. The post mortem certificate, which is placed on record as Ex.A3 would show that the deceased was aged about (19) years at the time of accident. The trial court took the notional income of the deceased @ Rs.15,000/- per annum, since he was a student at the time of the accident. However, a Division Bench of this Court in *B.RAMULAMMA v. VENKATESH BUS UNION, LINGARAJAPURAM, BANGALORE AND ANOTHER*¹ fixed the minimum income of an Engineering Graduate at Rs.12,000/- per month. In the said judgment, the Division Bench also held that the amount is to be reduced by 10% for each year, depending upon the year in which the deceased was studying. Since the deceased in the instant case was studying II Year B.Tech., at the time of accident, we feel that 20% of Rs.12,000/- has to be reduced for computing the income of the deceased. If 20% is deducted, the income of the deceased that is required to be taken into consideration towards loss of dependency, would be Rs.9,600/- per month, i.e., Rs.1,15,200/- per annum. From the said amount, 50% has to be deducted towards personal expenses, which would amount to Rs.57,600/-.

16. In view of the judgment of the Apex Court in *SARLA VERMA v. DELHI TRANSPORT CORPORATION*² the suitable multiplier would be '18', since the deceased was aged (19) years at the time of the accident. Therefore, the loss of dependency would be 57,600/- x 18 = 10,36,800/-.

¹ 2009(6) ALD 684 (DB)

² (2009) 6 SCC 121

17. The learned counsel for the appellant would also contend that the trial court erred in awarding a meagre amount of Rs.5,000/- towards funeral and traveling expenses, which is contrary to the judgment of the Apex Court in *NATIONAL INSURANCE COMPANY LIMITED v. PRANAY SETHI AND OTHERS*³ passed in SLP(Civil) No. 25590/ 14 decided on 31.10.17. Applying the ratio in *PRANAY SETHI*'s case, and as the deceased was a bachelor, the claimants would be entitled to an amount of Rs.30,000/- only (Rs.15,000/- towards funeral expenses and Rs.15,000/- towards loss of estate).

18. In view of the above, the claimants are entitled to the following amounts:

Salary income of the deceased : Rs.1,15,200/-

Less: 50% towards personal

Expenditure

(1,15,200/- x 50%) Rs. 57,600/-

Multiplier adopted is 18

(Rs.57,600/- x 18) : Rs.10,36,000/-

Under conventional head : Rs. 30,000/-

Medical Expenses (undisputed) : Rs. 15,691/-

19. Thus, in all, the claimants are entitled to Rs.10,81,691/- (Rs.10,36,000/- + Rs.30,000/- + Rs.15,691 (towards medical expenses incurred by them) (Rupees Ten lakhs eighty one thousand

³ (2017) ACJ 2700

six hundred and ninety one only) with simple interest @ 7.5% per annum from the date of petition till date of realization.

20. In view of the findings and the judgments referred to above, the appeal is disposed of, enhancing the compensation awarded to the claimants to Rs.10,81,691/- . However, no order as to costs in the appeal.

21. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE T.RAJANI

20.07.2018
DMG

