THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

THE HON'BLE SMT JUSTICE T. RAJANI

MACMA.Nos.2822 and 2880 of 2012

COMMON JUDGMENT: (per Hon'ble Sri Justice C. Praveen Kumar)

Since both these appeals are filed against the judgment in O.P.No.1100 of 2006 dated 01.06.2011, they are being disposed of by this common judgment.

2. MACMA.No.2822 of 2012 is filed by the claimants seeking enhancement of the compensation while MACMA.No.2880 of 2012 is filed by APSRTC questioning the quantum of compensation.

3. For the sake of convenience, the parties herein are referred to as arrayed in the said OP.

4. The averments in the claim petition filed under Section 166 of the Motor Vehicles Act (for short 'the Act') show that the petitioners are the wife, two daughters and parents of one Bellamkonda Rama Krishna Rao, who died in a motor accident on 21.01.2006 at about 8 AM. The said accident took place due to rash and negligent driving of the driver of the offending vehicle bearing No.AP 16 TU 5457. It is said that the deceased was coming on his motor cycle from his house to Vatlur lands and when he reached near CRR college, the vehicle driven by the first respondent hit against the deceased, as a result of which he fell down on the road, sustained injuries and died on the spot. In respect of the said accident, a case in CR.No.23 of 2006 came to be registered for the offence punishable under Section 304-A of the Indian Penal Code. A claim application came to be filed claiming compensation of Rs.50,00,000/-.

The first respondent was the driver of the offending vehicle, respondent No.2 is the owner of the vehicle, while respondent No.3 is the insurer of the said vehicle and respondent No.4 being the APSRTC.

The driver of the offending vehicle did not contest the matter and remained *ex parte*. One Smt. K. Hymavathi, who is the owner of the bus, filed written statement stating that the said vehicle was given on lease to APSRTC and that the driver of the bus has not violated the instructions given by APSRTC. In view of the terms and conditions incorporated in the agreement entered into between the said Hymavathi and APSRTC, it is pleaded that she is not at all liable to pay compensation. It is, however, urged that the said vehicle was insured by the insurance company and the policy was in force on the date of the accident.

The United India Insurance Company Limited filed their counter stating that the accident occurred due to the rash and negligent driving of the driver of the APSRTC bus and according to them, the alleged lease agreement on only a nominal one and brought into existence with an ulterior motive. Hence, pleaded that the same cannot be relied upon. It is also pleaded that the fourth respondent alone is liable to pay compensation.

The fourth respondent filed their written statement denying the allegations in the petition as well as in the counters filed by other respondents. While disputing the manner in which the accident took place and also the age of the deceased at the time of the accident, it is stated that the fourth respondent is not liable to pay any compensation.

Hence, urged that the compensation has to be paid by the owner of the vehicle.

Basing on the above pleadings, the Court below framed the following issues:

1. Whether the accident occurred due to the rash and negligent driving of the bus bearing No.AP 16 TU 5457 driven by its driver by the 1st Respondent?
2. Whether the petitioners are entitled to claim compensation, and if so, for how much amount?
3. To what relief?

In support of their claim, the claimants examined P.Ws.1 to 12 and got marked Exs.A1 to A31, while the respondents examined R.W.1 and marked Ex.B1, a copy of the insurance policy.

Basing on the evidence available on record, the Court below awarded a sum of Rs.7,42,500/- to the claimants with proportionate costs and interest at 7.5% per annum from the date of petition till realization against R1 to R4 to be paid jointly and severally. Assailing the said order, the present appeals are preferred viz. one by the claimants and the other by the APSRTC. In spite of service of notice, there is no representation on behalf of the insurance company.

5. Learned counsel for the appellants – claimants would contend that the Court below erred in not taking into consideration the income, which the deceased was earning by taking the lands on lease. It is pleaded by him that more than 50 acres of land was taken on lease by the deceased, which is proved through the evidence of P.Ws.3 to 6. He also places reliance on the income tax returns, Ex.A8 and A9,

to show the income earned. Apart from that, the counsel pleads that the Court below did not take into consideration the future prospects while calculating the loss in dependancy.

6. On the other hand, the learned standing counsel for APSRTC would contend that the Court below erred in directing the RTC to pay the compensation to the claimant, when the Hon'ble Supreme Court held that only insurance company can be ordered to pay when they hire a insured vehicle. In any event, he would contend that the income tax returns filed by the claimant cannot be accepted since those two returns came to be filed much after the death of the deceased. In other words, his plea is that those returns were filed along with the claim petition so as to create evidence with regard to the income of the deceased.

7. The question that falls for consideration is whether the quantum of compensation, as claimed by the claimants, requires reconsideration and whether the finding of the Court below directing RTC to pay compensation is illegal and incorrect.

8. The fact that the driver of the bus, which was taken on hire, by APSRTC, is responsible for the accident, is not seriously disputed. The issue, which requires consideration now, is as to the quantum of compensation to which the claimants are entitled to and the liability of APSRTC.

9. Insofar as the income tax returns are concerned, P.W.7, who is the Chartered Accountant of the deceased, was examined to speak to the returns filed. According to him, he submitted the income tax returns on behalf of the deceased for the assessment year 2005-06 wherein the

non-agricultural was shown as Rs.53,220/- and agricultural income was shown as Rs.4,50,000/- and for the assessment year 2006-07, the non-agricultural income was shown as Rs.82,830/- and agricultural income was shown as Rs.1,00,000/-. Exs.A8 and A9 are the copies of the income tax returns filed.

P.W.9, who is the Income Tax Officer, in his evidence deposed that the income tax returns for the assessment years 2005-06 and 2006-07 came to be submitted in his office on 25.07.2006 by the his wife Durga Malleswari Devi. From the above, it is clear that assessment for the years 2005-06 and 2006-07 came to be presented after the incident. No explanation is forthcoming as to why the income tax returns for the assessment years 2005-06 and 2006-07 came to be filed long after the accident. Therefore, a doubt would arise as to the quantum of income shown in those returns.

10. Hence, the argument of the counsel for the RTC is that the returns came to be filed by indicating higher income, so as to claim higher compensation, cannot be brushed aside. Having regard to the manner in which the income tax returns came to filed and the fact that the Income Tax Officer, in his evidence, admits that the returns were filed much after the accident, we feel that much importance cannot be given these returns. But, however, there is evidence on record in the form of P.W.10, who is the Assistant Commercial Tax Officer, Eluru, to show that the deceased obtained certificate of registration under the provisions of the A.P. General Sales Tax for doing business in bran, broken maize, groundnut cake in the name of Sri Padma Traders on 27.07.1987. In 1989, the business in Ceramic Tiles was added in the

certificate of registration. On 09.07.1992, the deceased obtained C.S.T. license in form-B for running ceramic tiles business under the name of Sri Padma Traders. Ex.A13 is the said license. In the year 2005, the said license was cancelled since the turnover was below Rs.5,00,000/-. On 26.11.2005, the deceased applied for Value Added Tax License in the name of Sri Padma Traders, which was issued on 01.12.2005. Ex.A11 is the copy of VAT Registration Certificate. He applied for license with an estimated turnover of Rs.11,00,000/-. On 13.06.2006, P.W.1 gave a letter stating that the business in the name of Sri Padma Traders was closed due to the death of her husband. Hence, they have cancelled VAT certificate and CST license with effect from 24.01.2006. From the evidence of P.W.10, it is very much clear that the deceased was doing business in the name of Sri Padma Traders and his turn over was nearly Rs.5,00,000/- per annum prior to 2005. It is also to be noted that apart from doing business in bran, broken maize etc. he was also doing business in ceramic tiles. Had he been alive, definitely, he would have continued his business activities.

11. Be that as it may, even if the turnover was taken as Rs.5,00,000/- per annum, we feel that 15% of the turn over can be taken as profit of the deceased. Though the Court below gave a finding that his income can be assessed at Rs.75,000/- but strangely, took the income as Rs.70,000/- only as on the date of the accident, which we think is incorrect. Hence, the income of the deceased can be taken as Rs.75,000/- per annum.

12. Insofar as the income earned through agriculture, is concerned, P.W.1, in her evidence, stated that they owned 30 acres of land and

that the deceased had taken 50 acres of land on lease. But no evidence has been placed on record to show that the deceased was having 30 acres of land. No documentary evidence has been placed on record to prove the same. Insofar as the deceased taking lease of lands is concerned, the claimants examined P.Ws.3 to 6 to prove the same. P.W.3, in her evidence, stated that she owned Ac.1.94 cents of land in Vatlur village and she had given the said land on lease to the deceased from 18.01.2005 to 17.01.2007 and she received an amount of Rs.9,700/-; P.W.4, in his evidence, stated that he owns Ac.8.76 cents of land in Kesarapalli Village, Gannavaram Mandal, Krishna District and gave the said land on lease to the deceased from 22.07.2004 to 21.07.2005 and issued a receipt for Rs.70,000/-. He further admits that his wife Kaja Udaya Laxmi is having Ac.12.17 cents of land in the same village and gave the said land on lease to the deceased. According to him, an amount of Rs.1,20,000/- was paid towards lease amount. He further deposed that the deceased used to cultivate paddy and sugarcane and used to earn Rs.3,00,000/- to Rs.4,00,000/- per year. P.W.5, in her evidence, stated that she got Ac.0.65 cents of land in Vatlur village and gave the land on lease to the deceased from 18.01.2005 to 17.01.2006 and he received an amount of Rs.3,250/- on 28.12.2004. So is the evidence of P.W.6.

13. It is, no doubt, true that there is no documentary evidence to show the yield, which the deceased obtained by cultivating the said lands. But, at the same time, the evidence of the above witnesses shows that the deceased took the said lands on lease. Had the deceased

been alive, probably, he would have continued with the agricultural operations.

14. Having regard to the above circumstances, more particularly, with regard to the manner in which the deceased was earning by way of doing agricultural operations and also by doing business in tiles, which was spoken to by P.W.10, an additional income of Rs.3,000/- per month can be added to the monthly income of the deceased. That being so, the annual income would be Rs.3,000/- x 12 = Rs.36,000/- + Rs.75,000/- = Rs.1,11,000/-. Following the decision of the Supreme Court in NATIONAL INSURANCE CO. LTD. v. PRANAY SETHI[1] the future hike in the income would be 25%, having regard to the age of the deceased (46 years) and the standardized income would come to, Rs.1,11,000/- + (Rs.1,11,000/- x 25% = Rs.27,750/-) = Rs.1,38,750/-. Out of the said amount, since the claimants are five in number 1/4th has to be deducted towards personal expenditure of the deceased, as per the decision of the Hon'ble Supreme Court in SARLA VERMA v. DELHI TRANSPORT CORPORATION[2], which would come to Rs.1,38,750/- - (Rs.1,38,750/- x ¼ = Rs.34,687/-) = Rs.1,04,063/-. Adopting the relevant multiplier '13', as the age of the deceased was 46 years at the time of the incident, the loss in future income would come to Rs.1,04,063/- x 13 = Rs.13,52,819/-. Apart from the above, a sum of Rs.40,000/- is awarded to the first claimant towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- under the head funeral expenses, as per the decision in PRANAY SETHI's case (supra). Hence, the claimants are entitled to total compensation of

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[1] 2017 ACJ 2700
[2] (2009) 6 SCC 121

Rs.13,52,819/- + Rs.40,000/- Rs.15,000/- + Rs.15,000/- = Rs.14,22,819/-.

15. At this stage, learned counsel for the APSRTC relied on a decision of the Supreme Court in MANAGING DIRECTOR, KSRTC v. NEW INDIA ASSURANCE COMPANY LIMITED[3] to show that APSRTC is not liable to pay any compensation where a hired insured bus involves in the accident. The Hon'ble Supreme Court held as under:

> "34. In view of the decision in *HDFC Bank Limited v. Reshma* [(2015) 3 SCC 679) the insurer cannot escape the liability, when ownership changes due to the hypothecation agreement. In the case of hire also, it cannot escape the liability, even if the ownership changes. Even though, KSRTC is treated as owner under Section 2(30) of the Act of 1988, the registered owner continues to remain liable as per terms and conditions of lease agreement lawfully entered into with KSRTC.
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> 35. In view of the aforesaid discussion, we hold that registered owner, insurer as well as KSRTC would be liable to make the payment of compensation jointly and severally to the claimants and the KSRTC in terms of the lease agreement entered into with the registered owner would be entitled to recover the amount paid to the claimants from the owner as stipulated in the agreement or from the insurer.

16. In view of the above, we hold that the claimants are entitled to a total compensation of Rs.14,22,819/- with proportionate costs payable by respondents 2 to 4 (owner, insurer and APSRTC) jointly and severally and APSRTC is entitled to recover the amount paid to the claimants form the owner or from the insurer, as stipulated in the agreement, if any. The apportionment of compensation shall be made in terms of the apportionment made by the Court below. The award shall

[3] (2016) 2 SCC 382

relate back to the date of decree and the compensation awarded shall carry the interest at the rate and from the date specified by the Court below.

In the result, MACMA.Nos.2880 and 2822 of 2012 are allowed in part. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

C. PRAVEEN KUMAR, J

T. RAJANI, J

July 19 , 2018
DSK