

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2399 OF 2016

JUDGMENT:

The present appeal is preferred by respondent No.2 - erstwhile Andhra Pradesh State Road Transport Corporation (for short 'Corporation') under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act'), questioning the award and decree, dated 17.04.2015, passed in O.P. No.145 of 2014, by the learned Chairman, Motor Accidents Claims Tribunal - cum - II Additional District Judge, Karimnagar at Jagtial, awarding a compensation of Rs.10,80,000/- with interest at the rate of 7.5% per annum from the date of petition till realization, as against the claim of Rs.18,00,000/- laid by the petitioners under Section 166 (1) (c) of the Act, for the death of one Koyalkar Raju in a road accident.

2. Heard Sri A. Ravi Babu, learned standing counsel for the appellant, and Sri G. Madhusudhan Reddy, learned counsel for respondent Nos.1 to 4.

3. Respondent No.3, who is driver of RTC bus, and the appellant - Corporation herein, are respondent Nos.1 and 2 in the aforesaid O.P., while respondent Nos.1 to 4 herein, who are legal heirs of deceased - Koyalkar Raju, are the petitioners.

4. For the sake of convenience, the parties hereinafter referred to as they were arrayed in the O.P.

5. Adverting to the fact-situation briefly, on 02.05.2014, deceased - K. Raju, along with others was travelling in an auto-rickshaw bearing registration No.AP 15V 6842 to go to Lambadipally village to attend caste avocation i.e., butchering work and when it reached the outskirts of Rajaram village at about 03:30 hours, since the driver of RTC Bus bearing registration No.AP 15Z 0190 drove it in a rash and negligent manner, he hit the auto-rickshaw, due to which, all the inmates including the driver of the auto-rickshaw sustained injuries and subsequently the deceased succumbed to the injuries.

i) According to the petitioners, the deceased was 28 years old on the date of filing the petition and he used to earn Rs.15,000/- per month and contribute the same to the family. Therefore, the petitioners, claiming themselves to be the parents and the brother and sister being dependants on him, sought to grant Rs.18,00,000/- as compensation.

6. Respondent No.1, driver of RTC bus, remained *ex parte*.

7. Respondent No.2 - Corporation filed counter resisting the claim. It has taken the ground that in spite of seating capacity of two persons, five passengers were travelling and five goats were also

loaded and, therefore, on account of negligence of driver of the auto-rickshaw, the accident had occurred.

8. Basing on the aforesaid pleadings, the Tribunal framed the following three issues:

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1. Whether the accident had occurred due to rash and negligent driving of the offending vehicle bearing No.AP-15-Z-0190 by its driver?
2. Whether the petitioners are entitled for compensation, if so, to what amount and from whom?
3. To what relief? ”

9. During inquiry, PWs.1 and 2 were examined and Exs.A-1 to A-11 were marked on behalf of the petitioners. On behalf of respondents, respondent No.1 himself was examined as RW.1, but no documents were filed.

10. Issue No.1, the Tribunal held in affirmative observing that on account of rash and negligent driving of the driver of RTC bus, the accident has occurred by disbelieving the evidence of RW.1 and believing the evidence of PW.2. On issue No.2, taking the age of the deceased as 28 years and as he was unmarried by the accident of accident and earnings at Rs.6,000/- per month or Rs.72,000/- per annum on his profession, deducted 50% towards personal expenses and added 50% towards future prospects and arrived at Rs.54,000/- towards contribution per annum and applying the relevant multiplier '17' arrived at Rs.9,18,000/-. Besides the same, a sum of Rs.10,000/-

towards loss of estate, Rs.10,000/- towards funeral expenses and another sum of Rs.2,000/- towards transportation of dead body were awarded. Further, the Tribunal also awarded a sum of Rs.1,40,000/- towards medical expenses and, thus, a total sum of Rs.10,80,000/- was awarded as compensation, apportioning the amount at Rs.4,40,000/- to petitioner Nos.1 and 2, who are parents of the deceased each, and Rs.1,00,000/- to petitioner Nos.3 and 4 each, who are younger brother and sister. The Tribunal also awarded the interest at the rate of 7.5% per annum on the said amount from the date of petition till realization.

11. Aggrieved over the said award and decree, respondent No.2 - Corporation preferred the present appeal, contending that Exs.A-3 and A-4 ought not to have taken into consideration to assess the age of the deceased and the multiplier factor '17' is on higher side. It is also agitated that there was negligence on the part of the driver of the auto-rickshaw as more than two persons were sitting and he lost control over the steering of the auto-rickshaw and dashed the RTC bus, but the Tribunal did not properly appreciate the same. It is also agitated that the Insurer of the auto-rickshaw ought to have been impleaded as it is a necessary party and, therefore, the claim is bad for non-joinder and on account of non-joinder, the claim is liable to be dismissed.

12. Perused the award and the material available on record. As could be seen from the reasoning adopted by the Tribunal, certainly, it cannot be faulted for the reason as per the decisional law then in

vogue, 50% was taken towards future prospects. But in view of the decision in **National Insurance Company Limited v. Pranay Sethi and others**¹, where the Hon”ble Apex Court reviewed future prospects and reduced it to 40% for the age group between 30-40 years, 25% between the age group of 40-50 years, 40% is taken towards future prospects over the contribution amount and, thus, the petitioners are entitled to the compensation. Accordingly, to that extent, the finding is disturbed, reducing the future prospects computed at 50% to that of 40%. The result is, that the annual contribution would work out to Rs.8,400/- (i.e., monthly income of Rs.6,000/- plus Rs.2,400/- towards 40% future prospects thereon) and the annual earnings would come to Rs.1,00,800/- and when 50% is deducted towards personal expenses of the deceased, it would work out to Rs.50,400/-, and when the relevant multiplier factor ‘17’ is applied, the total loss of dependency works out to Rs.8,56,800/- and, therefore, the same is granted in place of Rs.9.18,000/- awarded by the Tribunal.

13. The amount of Rs.1,40,000/- awarded by the Tribunal towards medical expenses is based on Exs.A-8 to A-10 and, therefore, the same is confirmed, so also the amounts of Rs.10,000/-; Rs.10,000/- and Rs.2,000/- towards loss of estate, funeral expenses and transportation of dead body, respectively. Thus, the petitioners

¹. 2017 (13) SCALE 12

are entitled to Rs.10,18,800/-, but not Rs.10,80,000/- awarded by the Tribunal.

14. Even the rate of interest awarded by the Tribunal at 7.5% per annum is in tune with the rate of interest awarded by the Hon'ble Supreme Court in **Rajesh v. Rajbir Singh**², the same is maintained.

15. Accordingly, the present appeal is allowed in part, reducing the compensation amount to Rs.10,18,800/- (Rupees ten lakhs eighteen thousand and eight hundred) from Rs.10,80,000/- (Rupees ten lakhs eighty thousand) awarded by the Tribunal, and confirming the award and decree passed by the Tribunal in all other respects. The awarded amount shall be apportioned among the petitioners in the same proportion in which the original compensation amount was directed to be apportioned and disbursed by the Tribunal. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

March 20, 2018.

Mgr

². (2013) 9 SCC 54