

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA.No.1609 of 2010

JUDGMENT:

The appellants-respondents filed this appeal against the order dated 16-06-2010 passed in OP.No.471 of 2009 on the file of Motor Accidents Claims Tribunal-cum-District Judge, Nizamabad awarding compensation of Rs.4,54,000/-, with interest @ 7.5% per annum, out of claim of Rs.8.00 lakhs for the death of one Ambati Bhasker in a motor vehicle accident.

The appellants herein, were Andhra Pradesh Road Transport Corporation (APSRTC) and the Depot Manager who are respondents, while respondent herein was the petitioner, in the original petition.

For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

The factual background of the case in brief is that On 05-01-2005 deceased and his brother by name Ambati Laxminarayana were going on T.V.S.Champ bearing No.AP-10/C-2583 from Kamareddy towards Narsinghi Village, when they reached infront of Reliance Petrol Pump on N.H.No.7 in the limits of Anthampally

village outskirts at a distance of 2 Kms towards north from the Bhiknoor Police Station, it was about 7 pm. Meanwhile, one RTC bus bearing No.AP-10/Z-9571 belonging to Armour Depot being driven by its driver in a rash and negligent manner at high speed lost control over the bus and dashed against the T.V.S Champ. Due to which, deceased and his brother Ambati Laxminarayana fell down from the TVS Champ and bus ran over them. As a result of said accident, deceased and his brother sustained multiple fractures and grievous injuries all over the body. Immediately deceased was shifted to Government Area Hospital, Area Hospital, Kamareddy and from there he was shifted to Gandhi Hospital, Secunderabad, where deceased died while undergoing treatment. A case in Cr.No.2 of 2005 was registered by Bhiknoor Police. It was further stated that deceased was aged about 22 years at the time of accident and hale and healthy and earning Rs.15,000/- to Rs.20,000/- per month by doing business. Therefore, the petitioner sought for compensation of Rs.8.00 lakhs towards compensation from respondents 1 and 2 who are owner of RTC bus and controlling authority of said bus respectively are jointly and severally liable to pay compensation.

The respondent-Corporation filed counter denying the allegations made in the petition and further contended that accident was not due to rash and negligent driving of driver of the bus bearing No.AP 10/Z-9571 as alleged by the petitioner because the driver of bus was driving the bus slowly on the left side of the road from Hyderabad to Armoor on 05-01-2005 and when the bus reached the place of accident the driver of bus observed two sugarcane loaded tractors were going in the same direction and one lorry was also going in the same direction and the said lorry was overtaking the tractors and bus was going behind the lorry and in the meanwhile TVS Champ bearing No.AP 10/C2583 came in a rash and negligent driving with high speed in opposite direction and dashed to the lorry and fell down and the driver of the bus informed the same to the Police Station Bhiknoor, later on the police falsely issued FIR against the driver of the bus. The owner and insurer of the TVS Champ and lorry are proper and necessary parties to the petition. These respondents are not liable to pay any compensation. It was also stated that the claim of the petitioner at Rs.8.00 lakhs is excessive. Hence prayed to dismiss the petition.

On the basis of above pleadings, the following issues are settled for trial:

1. Whether the accident has taken place due to rash and negligent driving of APSRTC bus bearing No.AP-10Z-9571 by its driver?
2. Whether the petitioner is entitled for compensation? if so, to what just amount and against whom?
3. To what relief?

The Tribunal on consideration of evidence of PWs 1 to 3 examined on behalf of petitioner and Exs A-1 to A-14 and RW.1 granted an amount of Rs.4,54,000/- with interest at 7.5% per annum from the date of filing of petition till the date of realization, out of claim of Rs.8.00 lakhs. Against same, the present appeal is filed by the respondents.

Sri N.Vasudeva Reddy, learned counsel for the appellant-Corporation submits that though the appellant Corporation examined RW.1 driver of the bus and driver of the bus was acquitted in the criminal case, the said aspects were not considered by the Tribunal and given a finding that the driver of the offending bus was driving the bus in a rash and negligent manner solely basing on the evidence of PW.2. He also submits that though there is no income proof, the Tribunal has taken income of

deceased as Rs.5,000/- per month, which is on higher side.

Heard Sri L.Dayakar Reddy, learned counsel for the respondent-claimant.

In this case it is to be seen that though the Tribunal gave a finding to the effect that the driver of the bus was negligent in driving the bus cannot be of much relevance, because the Tribunal has granted compensation under Section 163-A of the Motor Vehicles Act (for short “the Act”). As per Second Schedule of Section 163-A of the Act, the appropriate multiplier to the person aged 45 years is ‘15’. As such, the Tribunal by applying the said multiplier to the age of deceased mother, who is the mother of deceased and claimant awarded an amount of Rs.4,50,000/-(Rs.30,000/-x15= Rs.4,50,000/-) towards loss of dependency. But as per the judgment of Supreme Court in **National Insurance Company Limited v. Pranay Sethi**¹, age of deceased has to be taken for applying multiplier, but in the presence case age of deceased was 22 years and as per **Sarla Verma v. Delhi Transport Corporation**², multiplier ‘18’ has to be adopted for the said age and if said multiplier is applied, the compensation requires to be enhanced.

¹ 2017 Law Suit (SC) 1093

² 2009(6) SCC 121

Anyhow, the Tribunal has taken the income of the deceased at Rs.5,000/- per month, though there is no documentary evidence as contended by learned counsel for the appellant. But the Apex Court in **Sri Ramachandrappa v. Manager, Royal Sundaram Aliance Insurance Company Limited** held as under:

“ In the instant case, it is not in dispute that the appellant was aged about 35 years and was working as a Coolie and was earning Rs.4,500/- per month at the time of accident. This claim is reduced by the Tribunal to a sum of Rs.3,000/- only on the assumption that wages of the labourer during the relevant period viz. in the year 2004, was 100/- per day. This assumption in our view has no basis. Before the Tribunal, though Insurance Company was served, it did not choose to appear before the Court nor did it repudiated the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning a sum of Rs.3,000/- per month. Secondly, the appellant was working as a coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant. We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guess work, which may include the ground realities prevailing at the relevant point of time. In the present case, appellant was working as a Coolie and in and around the date of the accident, the wage of the labourer was between 100/- to 150/- per day or Rs.4,500/- per month. In our view, the claim was honest and bona fide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the appellant from 4,500/-

to 3,000/- per month. We, therefore, accept his statement that his monthly earning was '4,500.

In the present case, it is not the case of petitioner that he is a cooli, it is her specific case that deceased was doing business and earning Rs.15,000/- to 20,000/- per month. As such, the Tribunal has taken income of deceased at Rs.5,000/- per month is not on higher side. By taking Rs.5,000/- per month, the Tribunal has applied lower multiplier by taking the age of mother of deceased which is erroneous as per the judgment of **Pranay Sethi** (1 supra) instead of applying the age of deceased. As such, the contention of the appellant that the compensation granted by the Tribunal is excessive is not correct.

Having regard to the above, this Court is of the opinion that the Tribunal has considered the said aspect and granted just compensation, which does not require any interference.

In view of the same, I do not see any reason to interfere with the award of the Tribunal and the appeal is liable to be dismissed and accordingly, the same is dismissed. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand closed.

A.RAJASHEKER REDDY,J

13-02-2019

Nvl

