

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MA.CMA.NOS.1326 AND 1603 OF 2010

COMMON JUDGMENT

Both the appeals arise out of the order and decree dated 22-06-2010 passed by the Motor Accidents Claims Tribunal, Nizamabad in O.P.No.654 of 2009, wherein and whereby, the Tribunal awarded an amount of Rs.4,84,000/- as against the claim of Rs.8,00,000/-, on account of the death of the son of the claimants in the motor accident.

MA.CMA.NO.1326 of 2010 is filed by the claimants seeking enhancement of compensation, and MA.CMA.NO.1603 of 2010 is filed by the Andhra Pradesh State Road Transport Corporation, (for short 'the Corporation'), questioning the quantum of compensation and further contending that the Tribunal has not taken into consideration the contributory negligence on the part of the deceased.

The claimants are the parents of the deceased. Their case is that the deceased – Alle Tirumal, was studying first year engineering in Nexus Engineering College. On 02-12-2008 at about 10-20 a.m., the deceased, with a view to go to his college located on Nagarjunasagar State High Way, Yacharam limits, got down from city bus and while crossing the road, at the same time, the bus of the Corporation bearing No. AP 28/Z 896, which was going towards Podili from Hyderabad, dashed the deceased, due to which he sustained grievous injuries and died on the spot. The case of the claimants is that the accident occurred due to the rash and negligent driving of the driver of the bus in high speed.

The further case of the claimants is that the deceased at the time of accident was aged 19 years and was studying engineering first year and

good at studies and was assisting his father in agricultural operations to a tune of Rs.8,000/- per month and used to contribute the income to the family members, i.e., to the claimants, and due to his death, the lives of the claimants became gloomy and miserable, and are facing much hardship and that if the accident had not occurred, the deceased would have survived about eighty years and, that they lost their son at their old age and such loss, cannot be compensated under any circumstances.

With these averments, the claimants filed claim petition under Section 166(1)(c) of Motor Vehicles Act, 1988 and the Rules made there under, claiming compensation of Rs.8,00,000/- from the Corporation.

The police, P.S. Yacharam registered a case in Cr.No.134 of 2008 against the driver of the offending bus under Section 304-A IPC.

The Corporation filed written statement and denied the manner of accident as alleged by the claimants, age, avocation and income of the deceased and contending that the compensation claimed is excessive, sought for dismissal of the claim petition.

Based on rival claims, the Tribunal framed the following issues for trial:

1. Whether the accident has taken place due to rash and negligent driving of APSRTC bus bearing No.AP – 28/Z – 896 by its driver?
2. Whether the petitioners are entitled for compensation? If so to what just amount and against whom?
3. To what relief?

In support of the case of the claimants, the father of the deceased was examined as P.W.1, and another person, who alighted the bus at the time of the accident along with the deceased, was examined as P.W.2.

On behalf of claimants, Exs.A-1 to A-10 were marked. On behalf of the Corporation, R.W.1, the driver of the crime vehicle was examined, and no documents were marked.

Appreciating the entire evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the offending bus. The Tribunal, taking the income of the deceased at Rs.5,000/- per month and after deducting 50% of the said income towards his personal expenses, arrived at Rs.30,000/- per annum and applying the multiplier of 16, by taking the age of the mother of the deceased, awarded Rs.4,80,000/- towards loss of dependency. The Tribunal further awarded Rs.2,000/- towards transportation charges, Rs.2,000/- towards funeral charges and thus in all, awarded an amount of Rs.4,84,000/-, with proportionate costs and interest at the rate of 7.5 per cent per annum from the date of the petition till date of realization, and further passed orders with regard to apportionment and mode of deposit of the amount and its withdrawal.

Sri N.Vasudeva Reddy, learned Standing Counsel for the Corporation, contended that Tribunal has erred in not taking into consideration the contributory negligence on the part of the deceased. With regard to quantum, learned Standing Counsel contended that claimants have not produced any documentary evidence and the Tribunal notionally fixed the earnings of the deceased at Rs.5,000/- per month and granted compensation, and the same is on the higher side. With these contentions, he sought to set aside the impugned award.

On the other hand, learned counsel appearing for the claimants contended that the Tribunal based on the evidence, both oral and

documentary, recorded finding of fact that the accident occurred due to rash and negligent driving of the driver of the bus of the Corporation and the finding of fact may not be interfered with. He further submits that the deceased was studying first year engineering and was good at studies and was also assisting his father, to a tune of Rs.8,000/- per month and was contributing the income to his family and that, had the accident not taken place, he would have completed his studies and would have settled in life with good salary and lived at least up to the age of eighty and in these facts and circumstances, the Tribunal could have taken the monthly income of the deceased at least Rs.8,000/-, but it has taken only Rs.5000/-. Learned counsel further submits that the Tribunal has taken the multiplier based on the age of the parents of the deceased instead of taking the age of the deceased and, therefore, sought to take the age of the deceased to apply the appropriate multiplier. He submits that if the age of the deceased is taken, the appropriate multiplier as per the judgment of the Apex Court in *SARLA VERMA AND OTHERS vs. DELHI TRANSPORT CORPORATION*¹, would be '18'. He further submits that Tribunal has not granted any amount under the head of future prospects of the deceased and awarded meagre amounts under the heads of transportation and funeral charges. He further submits that Tribunal has not awarded any amount towards loss of estate. With these submissions, he sought to enhance the compensation.

In view of the above rival contentions, the issue that arises for my consideration is whether the impugned award warrants any interference?

¹ 2009 ACJ 1298

To prove that the accident occurred due to rash and negligent driving of the driver of the offending vehicle, the father of the deceased was examined as P.W.1 and he deposed as per the claim petition.

P.W.2, is the student, who witnessed the accident. He deposed that on 02-12-2008 at about 10-20 a.m., soon after getting down from the city bus at Nexus Engineering College cross roads bus stop, Yacharam village, he was going to his college and he witnessed one APSRTC bus bearing No. AP -28/Z-896, going towards Podili from Hyderabad, driven by its driver in a rash and negligent manner at high speed and dashed the deceased, who was crossing the road, and that due to the accident, the deceased sustained serious injuries and died on the spot. Though he was cross-examined, nothing could be elicited to contradict his evidence in the chief examination.

The driver of the crime vehicle was examined as R.W.1. He deposed that when the bus reached the place of accident, the deceased got down from front door of the city bus of Ibrahimpatnam Depot bearing No. AP 10/Z – 1358, which was coming from opposite direction and suddenly emerged from rear side and in that process, he touched the right side corner of the bus and fell down. He deposed that there was no rash and negligence on his part and that the accident occurred due to rash and negligence of the deceased.

It is to be seen that the place of accident is Nexus Engineering College Cross Roads Bus Stop, Yacharam village, which is a busy locality, where engineering college is located and densely populated. R.W.1, who is the driver of the bus, in his evidence, admitted that the deceased got down from the front door of the city bus of Ibrahimpatnam depot and

emerged from rear side of the bus. This shows that there is bus stop and the area is a busy locality, where the people will be frequently crossing the road. Therefore, when the bus reaches such busy places, where there is bus stop, the driver of the bus shall be cautious and shall drive the bus slowly to prevent any untoward incident. P.W.2 is the student, alighted the bus along with the deceased. He categorically deposed that deceased and himself got down from the same bus and while they were crossing the road, R.W.1 drove the bus in a rash and negligent manner and dashed against the deceased. This shows that the driver of the bus drove the vehicle, without taking minimum care. Further, the police who registered the crime, after investigation, filed charge sheet Ex.A-2, alleging that the accident occurred due to rash and negligent driving of R.W.1, who is the driver of the bus. Considering these facts and circumstances, the Tribunal, in my considered view, rightly recorded finding of fact that the accident occurred due to rash and negligent driving of the driver of the bus of the corporation. This finding of fact, in the absence of any contra evidence, cannot be interfered with, to hold that the deceased contributed the accident.

The case of the claimants is that the deceased was aged 19 years, studying first year engineering and was assistant his father to an extent of Rs.8,000/- per month in agricultural operations and contributing the income to the family. The claimants have not produced any documentary proof. The Hon'ble Supreme Court in the case of *RAMACHANDRAPPA v. THE MANAGER, ROYAL SUNDARAM ALIANCE INSURANCE COMPANY LIMITED*² has taken the monthly income of a daily wager at Rs.4,500/- to an accident that occurred in the year 2004. Therefore, having regard to the facts and circumstances of the case on

² AIR 2011 SC 2951

hand, this court is of the considered view that the Tribunal has rightly taken the monthly income of the deceased at Rs.5,000/-, and the same warrants no interference.

Relying on the judgment of the Apex Court in *Sarla Verma's* case (1 *supra*), as the deceased was unmarried at the time of accident, Tribunal deducted 50 per cent of his income towards personal expenditure and arrived at Rs.30,000/- per annum towards the contribution of the income of the deceased to his family.

The contention of the learned counsel for the claimants is that the age of the deceased, who is a bachelor, has to be taken instead of age of the parents of the deceased, to apply appropriate multiplier. In this regard, the Apex Court in *MUNNA LAL JAIN v. VIPIN KUMAR SHARMA*³ held as under:

“11. The remaining question is only on multiplier. The High Court following *Santosh Devi* {(2012)6 SCC 421}, has taken 13 as the multiplier. Whether the multiplier should depend on the age of the dependants or that of the deceased, has been hanging fire for some; but that has been given a quietus by another three-Judge Bench decision in *Reshma Kumari* {(2013)9 SCC 65}. *It was held that the multiplier is to be used with reference to the age of the deceased.* One reason appears to be that there is certainty with regard to the age of the deceased but as far as that of dependants is concerned, there will always be room for dispute as to whether the age of the eldest or youngest or even the average etc., is to be taken. To quote: (*Reshma Kumari* case, SCC P. 88, para 36)

“36. In *Sarla Verma* {(2009)6 SCC 121}, this Court has endeavoured to simplify the otherwise complex exercise of assessment of loss of dependency and determination of compensation in a claim made under Section 166. It has been rightly stated in *Sarla Verma* that the claimants in case of death claim for the purpose of compensation must establish (a) age of the deceased; (b) income of the deceased; and (c) the number of dependants. To arrive at the loss of dependency, the Tribunal must consider (i) additions/deductions to be made for arriving at the income; (ii) the deductions to be made towards the personal living expenses of the deceased; and (iii) *the multiplier to be applied with reference to the age of the*

³ (2015)6 SCC 347

deceased. We do not think it is necessary for us to revisit the law on the point as we are in full agreement with the view in *Sarla Verma*.

(Emphasis added)

From the above decision it is clear that multiplier has to be applied with reference to the age of the deceased.

From the impugned award it could be seen that the Tribunal as taken the second schedule under Section 163-A of the Motor Vehicles Act, 1988 as guideline to apply the multiple. The present claim petition is filed under Section 166 of the Act. Considering claims under Sections 163-A and 166 of the Act, the Apex Court in *Sarla Verma* case (1 supra) held as under:

“37. The principles relating to determination of liability and quantum of compensation are different for claims made under Section 163-A of the MV Act and claims under Section 166 of the MV Act. (See *Oriental Insurance Co. Ltd. v. Meena Variyal* {(2007)5 SCC 428}, Section 163-A and the Second Schedule in terms do not apply to determination of compensation in applications under Section 166. In *Trilok Chandra* {(1996)4 SCC 362} this Court, after reiterating the principles stated in *Susamma Thomas* {(1994)2 SCC 176}, however, held that operative (maximum) multiplier, should be increased as 18 (instead of 16 indicated in *Susamma Thomas*), even in cases under Section 166 of the MV Act, by borrowing the principle underlying Section 163-A and the Second Schedule.

..

41. Tribunals/courts adopt and apply different operative multipliers. It is necessary to avoid this kind of inconsistency. We are concerned with cases falling under Section 166 and not under Section 163-A of the MV Act. In cases falling under section 166 of the MV Act, *Davies method* {(1942)1 All ER 657(HL)} is applicable.

42. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the table above (prepared by applying *Susamma Thomas*, *Trilok Chandra* and *Charlie*), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years,

that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.”

From the above judgment of the Apex Court, it is clear that for the claim petitions filed under Section 166 of the Act, the multiplier mentioned at column No.4 of the table given in Sarla Varma's case (supra) has to be followed. As per column No.4 of the said table, for the age group of deceased between 15 to 20, multiplier 18 has to be taken. In the present case, the deceased is aged 19 years. Therefore, the appropriate multiplier that has to be used is '18', but the Tribunal, taking the age of the mother of deceased, applied the multiplier of 16.

The Apex Court, in Ramachandrappa's case (2 supra), has taken the monthly income of a daily-wager at Rs.4,500/- per month. In the present case, the Tribunal has taken the monthly income of the deceased, at Rs.5,000/-. This court is not inclined to interfere with the multiplier applied by the Tribunal, as the difference would be meagre and more over deceased was studying engineering first year. Further, the Tribunal did not award any amount towards loss of estate, future prospects and granted meagre amount of Rs.2,000/- each towards funeral and transportation charges, this court is not inclined to interfere with the same, since the Tribunal has taken the monthly income of the deceased on little higher side, than the income taken by the Apex Court in Ramachandrappa's case (2 supra). Further, the Tribunal granted interest on the compensation at the rate of 7.5 per cent per annum,

which is appropriate as per the judgment of the Apex Court in *TAMILNADU STATE TRANSPORT CORPORATION LTD. vs. S.RAJAPRYA*⁴.

Taking into consideration the totality of the facts and circumstances of the case, the Tribunal, in my considered view, has awarded just compensation and hence no exception can be taken.

For the foregoing reasons, I do not find any reason to entertain the appeals in exercise of appellate jurisdiction and the same are accordingly dismissed, confirming the impugned order.

Miscellaneous petitions pending, if any, shall stand closed. No costs.

A.RAJASHEKER REDDY,J

DATE:04—01—2019

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⁴ 2005(4) ALT 14