

**THE HONOURABLE SRI JUSTICE A. RAJASHEKER REDDY**

**MA.CMA. No.3578 of 2005**

**JUDGMENT:**

This appeal is filed by petitioners in M.V.O.P.No.1741 of 2003 on the file of Chairman, Motor Accident Claims Tribunal-cum-XXI Additional Chief Judge-cum-District Judge, Red hills, Nampally, Hyderabad, for enhancement of compensation, mainly on the ground that Tribunal deducted Rs.1,05,200/- towards contributory negligence on the part of deceased and granted them compensation to a tune of Rs.1,18,000/- only whereas they claimed a sum of Rs.4,00,000/- towards compensation.

It is the case of appellants that appellant Nos.1 & 2 and appellant Nos.3 & 4 are parents and sister and brother of Md. Aleem; that on 06.04.2003, at about 1400 hours, the said Md. Aleem and others were proceeding in a Jeep bearing No.APK 4706 from Nayaenanyally to Thimmajipet and when they reached near Wanapatla, one APSRTC Bus bearing No.AP10 Z 5995, driven by its driver, in rash and negligent manner, came in high speed in an opposite direction and dashed the Jeep, due to which, Mohd. Aleem and others sustained

injuries and died on spot and some other injured persons were shifted to Area Hospital, Nagar Kurnool. In this connection, Crime No.44 of 2003 was registered by Police, Nagar Kurnool; the deceased was working as driver and earning Rs.4,000/- per month; that due to his death, appellants had lost all their future hopes and source of income; that the accident occurred due to rash and negligent driving of driver of offending bus and thereby, they claimed compensation of Rs.4,00,000/- against respondents by way of filing O.P.

The Tribunal on appreciation of oral and documentary evidence, awarded compensation of Rs.2,11,200/- to appellants but deducted Rs.1,05,200/- from out of the said compensation towards contributory negligence on the part of the deceased, as such, awarded net compensation of Rs.1,18,000/- to appellants. Against the said order, this appeal is filed.

Learned counsel for appellants submits that as per the judgment of Apex Court in **Sarla Verma & Others v. Delhi Transport Corporation and another**<sup>1</sup>, contribution to personal expenses of deceased should be 1/4<sup>th</sup> from his income, when claimants are four in number, but, in present case, though

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<sup>1</sup> (2009) 6 Supreme Court Cases 121

appellants are four in number, Tribunal erroneously deducted 1/3<sup>rd</sup> amount from the income of deceased towards his personal expenditure. He further submits that Tribunal did not award 40% of income of deceased towards future prospects as held by a Constitution Bench of Apex Court in **National Insurance Company Limited v. Pranay Sethi**<sup>2</sup> and that an amount of Rs.30,000/- should be granted towards loss of estate and funeral expenses but only an amount of Rs.12,000/- was granted therefor. He also submits that Tribunal erroneously deducted 50% of compensation arrived at towards contributory negligence on the part of deceased though there was no evidence let in by respondents to that effect and that in O.P.No.2296 of 2003, which arose out of the same accident, Tribunal relying on Exs.A.1 and A.2 – CCs of FIR and Charge Sheet respectively, recorded a finding that alleged accident occurred due to rash and negligent driving of driver of APSRTC bus, but, in the order under appeal, Tribunal relying on self-same Ex.A.1 and Exs.A.2 to A.5, erroneously recorded a finding that alleged accident occurred in view of contributory negligence on the part of deceased as well as driver of APSRTC bus and that contributory negligence cannot

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<sup>2</sup> (2017) 16 SCC 680

be assumed where no evidence is let in by respondents to prove the same.

On the other hand, learned Standing Counsel for APSRTC appearing for respondents submits that in the Jeep, deceased allowed 17 passengers to travel as against its capacity of '12', as such, Tribunal rightly deducted 50% of compensation amount on the ground that there was contributory negligence on the part of deceased and that Tribunal rightly took income of deceased at Rs.2,400/- per month and it needs no interference by this Court.

It is to be seen that finding recorded by Tribunal in O.P.No.2296 of 2003 that accident occurred due to rash and negligent driving of driver of APSRTC Bus became final as no appeal is filed by respondents as against order passed in that O.P. and more so, a perusal of Exs.A.1 and A.2 go to show that driver of APSRTC bus drove it in rash and negligent manner, thereby, it is evident that finding recorded by Tribunal in order under appeal that there was contributory negligence on the part of deceased in occurrence of accident is wrong, as such, deduction of 50% from out of compensation amount is erroneous.

In view of above facts and circumstances, coming to the assessment of compensation, Tribunal rightly took the income of deceased at Rs.2,400/- per month. It has not added 40% of the income of deceased towards future prospects. Therefore, as per the judgment of a Constitution Bench of Apex Court in **Pranay Sethi** (2 supra), 40% of income of deceased is to be added towards future prospects. Thus, income of deceased would be Rs.3,360/- per month {Rs.2,400/- + Rs.960/- (Rs.2,400/- x 40/100)} i.e., Rs.40,320/- per annum. Further, appellants are four in number, as such, 1/4<sup>th</sup> should be deducted towards personal expenses of deceased from his income. Then, loss of contribution to family comes to Rs.30,240/- per annum. For the age of deceased, as per the judgment of Apex Court in **Sarla Verma** (1 supra), appropriate multiplier is '18'. Then, total loss of contribution to family comes to Rs.5,44,320/- (Rs.30,240/- x 18). Further, as per **Pranay Sethi** (2 supra), Rs.30,000/- may be awarded towards loss of estate and funeral expenses. Thus, appellants are entitled to total compensation of Rs.5,74,320/-.

Though compensation claimed in claim petition is Rs.4,00,000/-, there is no bar for granting just compensation in

excess of amount claimed as per Judgment in **Nagappa v. Gurudayal Singh & Others**<sup>3</sup>.

The enhanced compensation is apportioned among appellants in proportion to the amounts awarded to them by Tribunal.

In the result, this appeal is allowed enhancing the compensation from Rs.1,18,000/- to Rs.5,74,320/-. However, on the enhanced compensation of Rs.4,56,320/-, appellants are entitled to interest @ 7.5% per annum from the date of petition till realization. Tribunal is directed to deduct differential Court fee from enhanced compensation.

Consequently, Miscellaneous Petitions, if any pending, shall stand disposed of. No order as to costs.

**A. RAJASHEKER REDDY, J**

13<sup>th</sup> FEBRUARY, 2019.

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<sup>3</sup> (2003) 2 SCC 274