

THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A.No.420 and 637 of 2015

COMMON JUDGMENT:

These two appeals are being disposed of by this common judgment since M.A.C.M.A.No.420 of 2015 filed by the Road Transport Corporation and M.A.C.M.A.No.637 of 2015 filed by the claimants, seeking enhancement of the compensation, are directed against the very same order and decree, dated 01.10.2014 passed in O.P.No.362 of 2009 on the file before the Chairman, The Motor Vehicle Accident Claims Tribunal, (District Judge), Nizambad (for short "the Tribunal").

2. For the sake of convenience, the parties will hereinafter be referred to as arrayed before the Tribunal.

3. Brief facts of the case are that the petitioners, who are husband and minor children of Smt.K.Shirisha (hereinafter referred to as "the deceased") filed a petition, claiming compensation of Rs.20,00,000/- for the death of the deceased, who died in a motor vehicle accident that took place on 13.12.2008. It is stated that on 13.12.2008

at about 8 a.m. the deceased was traveling in APSRTC Bus No.AP-28-Z-2326 of Kanigiri Depot from Hyderabad to Nizambad. When the Bus reached near Annapurna Rice Mill, Ramayampet, the driver of the bus drove it in a rash and negligent manner at high speed and dashed on the back side of a parked lorry bearing No.AP-24-X-2588 due to which the deceased sustained grievous injuries on head, legs and other parts of the body. She was given first aid at Govt. Hospital, Ramayampet and thereafter referred to Krishna Institute of Medical Science, Hyderabad. She took treatment as in patient till 18.12.2008 and succumbed to injuries in the said hospital. It is further contended that the accident occurred due to rash and negligent driving of the APSRTC Bus No.AP-28Z-2326 by its driver only.

4. The Police, Ramayanpet Police Station, registered a case in Crime No.253 of 2008 for the offence punishable under Section 304-A and 337of I.P.C. against the driver of the Bus and took up the investigation.

5. It is stated that prior to the accident, the deceased was hale and healthy and was doing painting work on sarees and earning Rs.20,000/- per month. Since the accident occurred due to the rash and negligent driving of the driver of the Bus, the claimants laid the claim-petition against respondent, who is the owner and controlling authority of the aforesaid bus.

6. Respondent filed counter denying the averments in the petition including the manner in which the accident took place, age, avocation and income of the deceased etc. It is specifically contended that the bus, on its way from Hyderabad to Nizambad and when it reached the outskirts of Ramayampet village, due to frost the vision was not clear and he was driving the bus slowly and suddenly one boy was crossing the road from right side to left side and to avert accident, the driver of the bus took the bus to the left side of the road where one lorry was parked without any parking lights and the driver of the bus was unable to observe the lorry and dashed against the lorry and there is no rash and negligence on his side. As such, respondent is

not liable to pay the compensation. It is further contended that the compensation claimed is excessive and prayed to dismiss the claim-petition.

7. Based on the above pleadings, the Tribunal framed the following issues:

- 1) Whether the accident has taken place due to rash and negligent driving of RTC Bus bearing No.AP-28-Z-2326 by its driver?
- 2) Whether the petitioners are entitled to any compensation and if so, at what amount and from which of the respondents?
- 3) To what relief?

8. During trial, on behalf of the claimants, P.Ws.1 to 3 were examined and Exs.A1 to A12 were marked. On behalf of the respondent, R.W.1 was examined and Ex.B1 was marked.

9. After analyzing the evidence available on record, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the Bus and accordingly awarded an amount of Rs.11,25,000/- with interest @7.5% per annum from the date of petition till the date of

realization to be paid by the respondent. Challenging the same, the R.T.C. as well as the claimants have filed the present appeals, respectively.

10. Heard and perused the material available on record.

11. The only contention raised by the learned Counsel for the claimants is that as per the principles laid down by the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***¹, the claimants are also entitled to the future prospects and also Rs.77,000/- under conventional heads.

12. Learned Standing Counsel for the respondent would submit that the Tribunal erred in not considering the fact that the claimants did not make the driver, owner and insurer of the Lorry, which was parked negligently without taking any precautions. Since there was 50% contributory negligence on the part of the driver of the Lorry in parking

¹ 2017 ACJ 2700

the lorry without taking any precautions, the respondent is liable to pay only half of the compensation amount. It is further submitted that the issue with regard to the future prospects has been considered by the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others*** (supra) and as per that judgment, the claimants are entitled 40% amount towards future prospects. It is further submitted that the claimants are entitled to Rs.77,000/- only under the conventional heads but the Tribunal erred in awarding Rs.1,65,000/-. It is also contended that the Tribunal erred in awarding Rs.2,40,000/- towards medical expenses without any cogent evidence and therefore, prayed to reduce the compensation amount awarded by the Tribunal.

13. Insofar as the manner in which the accident took place is concerned, a perusal of the impugned order would show that the Tribunal has framed Issue No.1 as to whether the accident had occurred due to rash and negligent driving of the Bus by its driver, to which the Tribunal after considering the evidence of P.W.1 coupled

with the documentary evidence, has categorically observed that the accident has occurred due to the rash and negligent driving of the driver of the Bus and has answered in favour of the claimants and against the respondent. Therefore, I see no reason to interfere with the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of Bus.

14. Insofar as the quantum of compensation is concerned, considering the age and avocation of the deceased, the Tribunal has rightly taken the income of the deceased at Rs.6,000/- per month. Insofar as the future prospects are concerned to the housewives, the Apex Court recently in ***Kirti and another etc. v. Oriental Insurance Company Ltd.***² made certain general observations regarding the issue of calculation of notional income for homemakers and the grant of future prospects with respect to them, for the purposes of grant of compensation, which can be summarized as follows:

² AIR 2021 SC 353

“a. Grant of compensation, on a pecuniary basis, with respect to a homemaker, is a settled proposition of law.

b. Taking into account the gendered nature of housework, with an overwhelming percentage of women being engaged in the same as compared to men, the fixing of notional income of a homemaker attains special significance. It becomes a recognition of the work, labour and sacrifices of homemakers and a reflection of changing attitudes. It is also in furtherance of our nation’s international law obligations and our constitutional vision of social equality and ensuring dignity to all.

c. Various methods can be employed by the Court to fix the notional income of a homemaker, depending on the facts and circumstances of the case.

d. The Court should ensure while choosing the method, and fixing the notional income, that the same is just in the facts and circumstances of the particular case, neither assessing the compensation too conservatively, nor too liberally.

e. The granting of future prospects, on the notional income calculated in such cases, is a component of just compensation.”

15. In view of above said decision, the claimants shall be entitled to future prospects at the rate of 40%. Therefore, monthly income of the deceased comes to Rs.8,400/-

(Rs.6,000/- + Rs.2,400/-). Since there are three dependents of the deceased, one third income has to be deducted towards personal expenses, i.e., Rs.5,600/- per month. Since the age of the deceased was 38 years at the time of the accident, the appropriate multiplier is '15' as per the decision reported in **Sarla Verma v. Delhi Transport Corporation and another**³. Adopting multiplier 15, his total loss of earnings would be Rs.5,600/- x 12 x 15 = Rs.10,08,000/-. The claimants are also entitled to Rs.77,000/- towards loss of estate and funeral expenses, as per **Pranay Sethi's** case (supra). Considering the bills and receipts under Exs.A6 to A10, the Tribunal has rightly awarded Rs.2,40,000/- towards medical expenses. Thus, in all the claimants are entitled to Rs.13,25,000/-.

16. Accordingly, the M.A.C.M.A.No.420 of 2015 filed by the R.T.C. is dismissed and M.A.C.M.A.No.637 of 2015 filed by the petitioners is allowed in part and the compensation amount awarded by the Tribunal is enhanced from Rs.11,25,000/- to Rs.13,25,000/-. The enhanced amount

³ (2009) 6 SCC 121

shall carry interest at 7.5% per annum from the date of order passed by the Tribunal till the date of realization. The enhanced amount shall be apportioned among the petitioners in the same proportion in which original compensation amounts were directed by the Tribunal. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE M.G. PRIYADARSHINI

14.10.2022
BB/VSL