

HONOURABLE JUSTICE G. SRI DEVI

M.A.C.M.A.Nos.684 and 1342 of 2015

COMMON JUDGMENT:

These two appeals are being disposed of by this common judgment since M.A.C.M.A.No.1342 of 2015 filed by the claimants, seeking enhancement of the compensation and M.A.C.M.A.No.684 of 2015 filed by the R.T.C., are directed against the very same award and decree, dated 03.12.2014, passed in M.V.O.P.No.1554 of 2013 on the file of the Motor Accidents Claims Tribunal-cum-The Court of the Chief Judge, City Civil Court, Hyderabad (for short “the Tribunal”).

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

3. The facts, in issue, are as under:

4. The claimants filed a petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.15,00,000/- for the death of the deceased-P.Kiran Kumar, who died in a motor vehicle accident. It is stated that on 23.01.2013 while the deceased was proceeding as pillion rider on the motor cycle bearing No.AP 24 AK 4572 and when they

reached near Muthireddygudem Cross Roads, Maskunta, Hamlet of Raigiri Village, Bhongir Mandal, one RTC bus bearing No.AP 36 Z 0013, driven by its driver in a rash and negligent manner at high speed and dashed the motor cycle, due to which, the deceased fell down, received grievous injuries and died on the spot. As the accident occurred due to the rash and negligent driving of the driver of the RTC bus, the claimants filed the above O.P. against the respondents 1 and 2, who are the owners of the said RTC bus.

5. Before the Tribunal, the respondents filed counter denying the averments in the claim-petition, including the manner in which the accident took place, age, avocation and income of the deceased. It is mainly contended that the accident occurred only due to the negligence of the rider of the motor cycle on which the deceased was traveling as pillion rider. It is also contended that the compensation claimed is excessive and prayed to dismiss the claim-petition.

6. Basing on the above pleadings, the Tribunal framed the following issues:-

1. Whether the pleaded accident had occurred resulting in death of the deceased, P.Kiran Kumar, due to the rash and negligent driving of the Motor Vehicle (RTC bus bearing Registration No.AP 36 Z 0013), by its driver?
 2. Whether the petitioners are entitled to any compensation and, if so, at what quantum and what is the liability of the respondents?
 3. To what relief?
7. On behalf of the claimants, P.Ws.1 to 3 were examined and Exs.A1 to A7 were marked. On behalf of the respondents, neither oral nor documentary evidence was adduced.
8. After considering the oral and documentary evidence available on record the Tribunal held that the accident occurred due to the rash and negligent driving of the driver of the RTC bus and accordingly awarded an amount of Rs.9,43,000/- with interest at 7.5% per annum from the date of petition till the date of deposit. Challenging the same, the present Appeals came to be filed by the Road Transport Corporation and the claimants respectively.

9. Learned Standing Counsel for R.T.C. would submit that there was contributory negligence on the part of the rider of the motor cycle on which the deceased was proceeding as pillion rider and the Tribunal did not consider the said aspect.

10. Per Contra, learned Counsel appearing for the claimants would submit 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 entitled to future prospects at 40% and also Rs.77,000/- under conventional heads. Therefore, it is argued that the income of the deceased may be taken into consideration reasonably for assessing loss of dependency and prayed to enhance the same.

11. A perusal of the impugned judgment 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 vehicle by its driver, to which the Tribunal after considering the evidence of P.W.2 coupled with the documentary evidence, has categorically held that the accident was due to rash and

¹ 2017 ACJ 2700

negligent driving on the part of driver of the RTC bus. Therefore, I see no reason to interfere with the said finding.

12. Insofar as the quantum of compensation is concerned, since the deceased was running a Tent House under the name and style as "SLNS Tent House" at Patha Yadagiri Laxminarasimha Swamy Temple, Peddi Reddygudem, H/o. Datharpally Village, Yadagirigutta Mandal, the Tribunal has rightly taken the income of the deceased at Rs.6,000/- per month. In view of the judgment of the Apex Court in *National Insurance Co. Ltd. Vs. Pranaysethi and others* (1 supra), 40% for loss of future prospects on his personal income is to be added. Accordingly, if 40% is added towards loss of future prospects, the total amount would be Rs.6,000/- + 2,400/- = 8,400/-. From this, 1/4th is to be deducted towards personal expenses of the deceased following ***Sarla Verma v. Delhi Transport Corporation***² as the dependents are four in number. After deducting 1/4th amount towards his personal and living expenses, the contribution of the deceased to the family would be Rs.6,300/- per month. Since the age of the deceased was 30

² 2009 ACJ 1298 (SC)

years at the time of the accident, the appropriate multiplier is '17' as per the decision reported in **Sarla Verma v. Delhi Transport Corporation and another**³. Adopting multiplier '17', his total loss of earnings would be Rs.6,300/- x 12 x 17 = Rs.12,85,200/-. The claimants are also entitled to Rs.77,000/- under conventional heads as per **Pranay Sethi's** case (1 supra). Thus, in all the claimants are entitled to Rs.13,62,200/-.

13. Accordingly, M.A.C.M.A.No.684 of 2015 filed by the R.T.C. is dismissed and M.A.C.M.A.No.1342 of 2015 filed by claimants is allowed in part. The compensation amount awarded by the Tribunal is hereby enhanced from Rs.9,43,000/- to Rs.13,62,200/-. The enhanced amount will carry interest at 7.5% p.a. from the date of the order passed by the Tribunal. The enhanced amount shall be apportioned in the manner as ordered by the Tribunal. There shall be no order as to costs.

14. Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE G. SRI DEVI

29.03.2022
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³ (2009) 6 SCC 121

