

THE HON'BLE SRI JUSTICE N. TUKARAMJI

M.A.C.M.A.No.90 of 2013
AND
M.A.C.M.A.No.2934 of 2013

COMMON JUDGMENT:

Since these appeals filed by the claim petitioner and the respondent/APSRTC against the selfsame award, they were heard together and are being disposed of in this common judgment.

2. M.A.C.M.A.No.90 of 2013 filed by the respondent/APSRTC (hereinafter 'the respondent') disputing the liability and the quantum of compensation and MACMA No.2934 of 2013 has been filed by the claim petitioners (hereinafter 'the petitioners') seeking enhancement of compensation awarded in the decree and order dated 02.07.2012 in O.P.No.993 of 2009 on the file of Chairman, Motor Accident Claims Tribunal, Nizamabad-Cum-VIII Additional District Judge, Nizamabad.

3. The petitioners case in brief is that, on 13.11.2009 while Vislavath Manik Bai/deceased was standing at the bus-stand, the APSRTC bus bearing registration No.AP-10-Z-4219 (hereinafter 'the bus') was rash and negligently reversed without precautions

thereby dashed and ran over and caused her instantaneous death. Thereupon her husband, daughter, daughter-in-law filed the claim petition seeking compensation of Rs.8,00,000/-.

4. The learned Tribunal, after considering the materials placed on record held that the accident had occurred due to rash and negligent of the bus awarded Rs.4,68,056/- with 7.5% interest per annum against the respondents.

5. The petitioners in their appeal has contested that the tribunal ought to have considered the pleaded occupation and the monthly income in assessment of compensation. Further, future prospects were not considered and inadequate amounts were granted towards conventional heads. Thus, prayed for reassessment of the compensation.

6. In appeal, the respondent would contend that the tribunal failed to consider the aspect of contributory negligence on the part of the deceased and the possibility of suicide. Further, though the post mortem examination report/Ex.A-3 and inquest report/Ex.A-2 are showing the age of the deceased as 50 years,

erroneously the tribunal had taken the age at 43 years for computing the compensation. That apart, the multiplier employed and the interest awarded are excessive, hence, prayed for re-consideration.

7. In these rival claims, the points arises for determination are:

1. *“Whether the respondent/APSRTC is able to establish contributory negligence of the deceased/Vislavath Manik Bai in the accident”?*
2. *“Whether the claimants are entitled for enhancement of compensation, as prayed for?”*

Point 1:

8. The respondent pleaded that the accident occurred while the bus was being reversed, therefore, speed driving does not arise. Further, when the vehicle/bus is going in reverse, the persons behind the vehicle should have taken due care, which is conspicuously lacking and it shall be graded as contributory negligence. Even otherwise the act of the deceased could be an attempt of committing suicide. Hence, the tribunal should have

considered the contributory negligence while assessing the compensation.

9. In support of these pleadings, the respondents got examined the driver of the bus/RW.1. In chief affidavit the RW.1 stated that on the date of occurrence after the bus reached Pitlam bus stand and the passengers alighted, he got down from the bus and after ten minutes he checked the tyres and started the bus. In the meantime, passengers in the bus-stand shouted to stop the bus and when he got down and saw one woman under the rear tyres of the bus. Later he came to know that through the son of the deceased that she quarreled with him (her son) on the date of accident and intentionally jumped under rear of the bus. In cross examination, it was elicited that he did not give any complaint to the police and he did not file any material to show that deceased fell under the bus with a view to commit suicide. However, admitted that case was registered against him and facing trial for the accident.

10. A careful reading of the above evidence is disclosing that the RW.1 did not refer to any precautionary measures taken by

him while reversing the bus. Admittedly, except the word of RW-1 there is nothing to say that the deceased after the quarrel with her son she intentionally fell under the bus. It is pertinent to note that the RW.1 did not place this version before any authority. Above all, the police after investigation concluded that the accident occurred due to negligent driving of the RW-1. Thus, the contention of contributory negligence remains without basis and fails on merit.

11. In regard to the awarding compensation, the petitioners stand is that Vislavath Manik Bai/deceased was aged about 43 years and from the agricultural and as labour is earning Rs.9,000/- per month. No particular document is filed to substantiate these aspects. The tribunal basing on the pleading, the age had taken at 43 years. However, the entries in post mortem examination report/Ex.A-3 and inquest report/Ex.A-2 are showing the age of deceased as 50 years. In absence of any other evidence, relying on the entries in the post mortem examination report/Ex.A3, which is recorded by the doctor on appearing the physical conduction of the deadbody, is found

proper. Thus the deceased's age by the relevant date could be taken at 50 years.

12. With regard to the income, the occupation labour remained undisputed. Having regard to the age and probable income at the relevant period, the income at Rs.4,000/- per month found reasonable, as such, the conclusion of the tribunal in this regard is affirmed.

13. In *National Insurance Company Ltd. Vs. Pranay Sethi and others*¹ the Hon'ble Apex Court held that while computing the compensation the future prospects of the self-employed shall also be added. Considering the age and occupation of the deceased 25% of income has to be included towards future prospects and after deduction of 1/3 of the income towards personal living expenditure, the annual contribution of the deceased would be of Rs.40,000/-. If this amount is multiplied with the multiplier applicable to the age of the deceased i.e., 13, the sum comes to Rs.5,20,000/-. The petitioners are entitled for this amount towards 'Loss of Dependency'.

¹ (2017) 16 SCC 860

14. Besides, the petitioners are also entitled for Rs.15,000/- towards loss of estate; Rs.15,000/- towards funeral charges and the 1st petitioner is entitled for spousal consortium at Rs.40,000/- and as per the dictum in *United India Insurance Co. Ltd. vs. Satinder Kaur @ Satwinder Kaur and others*² the 2nd petitioner is entitled for parental consortium at Rs.40,000/-.

15. The breakup of the compensation is as hereunder:

DESCRIPTION	AMOUNT (Rs.)
Loss of Dependency	5,20,000.00
Loss of Estate	15,000.00
Funeral Charges	15,000.00
Spousal consortium	40,000.00
Parental consortium to the 2 nd petitioner	40,000.00
TOTAL	6,30,000.00

16. For the aforesaid reasons, M.A.C.M.A.No.90 of 2013 is dismissed, while M.A.C.M.A.No.2934 of 2013 is allowed as follows:

(i) the petitioners are awarded compensation of Rs.6,30,000/- (Rupees six lakhs thirty thousand only) with interest @ 7.5% per annum with costs., from the date of petition till date of realization;

² Civil Appeal No.2705 of 2020, dt.30.06.2020

ii) the respondent/APSRTC is liable to pay the compensation and directed to deposit the awarded amount by setting of the amounts paid if any, within one month from the date of receipt of a copy of this common judgment;

(iii) the apportionment among the petitioners shall be in terms of tribunal award.

(iv) on deposit of the awarded amount, the petitioners are permitted to withdraw entire amount apportioned in their favour.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

N.TUKARAMJI, J

Date: 22.07.2022
VRKS

THE HON'BLE SRI JUSTICE N. TUKARAMJI

M.A.C.M.A.No.90 of 2013 and 2934 of 2013

Date: 22.07.2022
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