

THE HON'BLE SRI.JUSTICE PULLA KARTHIK

M.A.C.MA. No.2116 of 2006

And

M.A.C.M.A. No. 849 of 2007

COMMON JUDGMENT:

MACMA No.849 of 2007 is filed by the Insurance Company and MACMA No.2116 of 2006 is filed by the claimants challenging the order and decree passed in O.P.No.402 of 2004 dated 21-06-2006 on the file of the Motor Vehicles Accidents Claims Tribunal-Cum-The Principle District Judge; Medak at Sangareddy. wherein the Tribunal had awarded a compensation of Rs.4,26,000/- as against the claim of Rs.8,00,000/- on account of the death of one Kallam Ramchander in a motor vehicle accident that occurred on 10-05-2004.

2. The case of the appellant is as follows:

On 10-05-2004 at 8.30 P.M the deceased was travelling by K.S.R.T.C., Bus bearing No.KA-38-2918 and when it reached near Koheer Cross Roads on the National

Highway No.9, its driver drove it in a rash and negligent manner and suddenly applied brakes, due to which, the deceased fell down from the bus on the road, the bus ran over his left leg, due to which he sustained head injuries and died on the spot. It is further pleaded that the accident was occurred due to rash and negligent driving of the driver of the bus. It is pleaded that the deceased was aged 35years and was working as a driver in A.P.S.R.T.C. Ranigunj-Depot, Hyderabad and earning monthly salary of Rs.5,598/- which he was contributing to the petitioners Nos.1 to 7, who are respectively his wife, children and parents.

3. The first respondent/K.S.R.T.C. filed its counter stating that the bus KA-38/2918 was not belong to the corporation and it belongs to a private person, that the first respondent hired the said bus from the private person on certain terms and conditions of operation as mentioned in the Agreement and since first respondent is not the owner of the said bus, the claim as against the first respondent is not maintainable as per Clause-15(a) of the Agreement, the

owner of the bus alone shall solely liable for any claim arising out of any accident, damage or loss or hurt caused during the operation of the bus and the first respondent shall not be liable for any such claim and all tortuous liability shall be borne by the owner/insurer of bus without any liability to the 1st respondent and therefore, request the claim as against the first respondent is liable to be dismissed.

4. The 2nd respondent set exparte before the Tribunal.

5. The 3rd respondent insurance company filed its counter denying the averments of the petition, putting the petitioner to strict proof of the same and contending that the deceased himself contributed for the accident. It is pleaded that while the deceased was standing near the door, due to imbalance, he fell down from the door and died, as such the 3rd respondent is not liable to pay any compensation to the petitioner; It is pleaded that the insured in collusion with the petitioners, did not report the

matter of accident to the insurer, as such; third respondent is not liable to pay any compensation to the petitioner.

6. Basing on the above pleadings, the following issues are framed by the Tribunal for trial:

1. Whether the accident occurred due to the rash and negligent driving of the driver of crime vehicle?

2. Whether the petitioners are entitled for compensation, if so, to what quantum and from whom?

3. To what relief?

7. On behalf of the petitioners PW1 to PW4 were examined and Ex.A1 to A8 were marked. On behalf of 1st respondent RW-1 was examined and got marked Exs.B1 and B2. Ex.B3 was filed by 3rd respondent with consent.

8. On considering the evidence and material on record the Tribunal was pleased to allow the petition in part and awarding a compensation of Rs.4,26,000/- with interest at

the rate of 7.5% per annum from the date of petition till realization as stated below.

1.	Future loss of earnings(36,000x11)	Rs.3,96,000/-
2.	Loss of consortium	Rs.15,000/-
3.	Loss of estate	Rs.15,000/-
	Total	Rs.4,26,000/-

9. Heard both sides and perused the record.

10. The appellant contends that the Tribunal ought to have noted that the deceased was driver in A.P.S.R.T.C. Ranigunj-Depot, Hyderabad and earning monthly salary of Rs.5,598/- per month and without considering the fact that the Tribunal committed a grave error in taking Rs.3,000/- per month as earnings of the deceased and awarded a meagre amount of compensation Rs.4,26,000/-

11. It is further contended that the Tribunal erred in taking the multiplier 11 instead of 15, as the age of the

deceased was 36 years for computing the future loss of earnings of the deceased.

12. It is further contended that the Tribunal failed in awarding consortium to the appellants.

13. In contra, the third respondent contends that the Tribunal erred in law and cause in fixing the liability of the insurance company and the Tribunal ought to have dismissed the claim against the insurance company. It is further contended that the Tribunal ought to have seen that as per stipulation 10 of the agreement i.e., Ex.B1 the bus shall ply as stage-carriage on the routes specified by the corporation i.e., respondent No.9 in MACMA No.849/2007. It is further contended that the Tribunal ought to have seen that though the driver of the bus is employed and paid by the original owner of the bus, for all other practical purposes the driver was under the control of corporation i.e., respondent No.9.

14. The contention of the appellant in MACMA No.849 of 2007 is that the crime vehicle (bus) was hired by the

K.S.R.T.C. from its registered owner (original). The registered owner paid the driver of the bus. The conductor, employed by the K.S.R.T.C. would be collecting the fare from the passengers, as such, as per the agreement between the K.S.R.T.C. and the registered owner are liable to pay the compensation, if any, awarded from the accident of the bus. Further the conditions in the Agreement as per condition 17 of the agreement (Ex.B2) between K.S.R.T.C. and registered owner herein the bus owner, the bus offered on hire shall be covered by comprehensive insurance policy and all costs and expenses shall be borne by the owner. The bus owner shall be solely liable to discharge claims arising out of road accident, damage or loss occurring during the operation and also all third party claims. The owner shall also bear tortuous liability arising from the operation of the bus. Here the bus owner includes both i.e. K.S.R.T.C and the registered owner. If the registered owner has got transit insurance policy, the respondent No.1 and 3 are liable i.e. K.S.R.T.C and insurance company are liable.

15. This Court has taken note of the above submissions made by the respective parties.

16. The Tribunal had taken the age of the deceased as 42 years, on the basis of ages of the children mentioned in the petition. According to PW1 i.e. wife of the deceased, the age of the deceased was about 36 years at the time of accident and in Ex.A3 i.e., inquest report and Ex.A4 i.e., (P.M.E. Report). The age of the deceased was recorded as 36 years. In view of the above the Tribunal had not justified in taking 42years and applied multiplier 11. Hence this court holds that it is appropriate to take the age of the deceased as 36 years on the basis of Ex.A3 and A4, for the purpose of calculation of future prospects and the multiplier is fixed at 15.

17. According to PW1, deceased was working as driver in A.P.S.R.T.C. and earning a monthly salary of Rs.6,500/- with over time allowance and he was drawing Rs.8,000/- per month. As per Ex.A6 and A7 identity card of the deceased, pay slip for the month of February, 2004

containing gross salary of the deceased at Rs.5,598/- and the net salary at Rs.4,410/-.

18. Hence the Tribunal had not justified in taking the net salary instead of gross salary of the deceased. This court holds that it is appropriate to take the gross salary of the deceased i.e., Rs.5,598/- towards monthly income of the deceased and as the dependents are 7 in number as per “pranay sethi’s” case 1/5th of his earnings are to be deducted towards personal expenditure of the deceased.

19. The appellants are entitled 50% of the established income of the deceased towards future prospects. As per the judgment of Honourable Apex Court in “Magma” case the first appellant is entitled Rs.40,000/- each towards spousal consortium, appellants 4 and 5 the sons of the deceased entitled Rs.40,000/- towards parental consortium, appellants 6 and 7 the parents of the deceased are entitled Rs.40,000/- each towards filial consortium and Rs.15,000/- towards funeral expenses as under:

1.	Future loss of earnings($5598+50\%=8397-1679=6,718 \times 12 \times 15$)	Rs.12,09,240/-
2.	Loss of consortium (Rs.40,000x5)	Rs.2,00,000/-
3.	Loss of estate	Rs.15,000/-
4.	Funeral expenses	Rs.15,000/-
	Total	Rs.14,39,240/-

Accordingly the compensation amount awarded by the learned Tribunal is hereby enhanced from Rs.4,26,000/- to Rs.14,39,240/-. The enhanced amount will carry interest at 7.5% p.a. from the date of petition till the date of payment against both the respondents jointly and severally subject to the appellants paying the court fee on the enhanced amount.

20. With regard to MACMA No.849 of 2007, this court holds that the Tribunal had justified in fixing the liability against the registered owner and the insurer relying on the apex court judgment reported in AIR 1997 SC 3444

(Rajasthan Road Transport Corporation Vs. Kailash Nath Kothari).

21. With the above modifications the appeal No. 2116 of 2006 is allowed and the MACMA No.849 of 2007 is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE PULLA KARTHIK

Date: 09-12-2022

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