

HONOURABLE SRI JUSTICE N. TUKARAMJI

MACMA.No.694 of 2011

JUDGMENT:

Assailing the order of dismissal dated 10.06.2010 in O.P.No.1853 of 2009 passed by the V Additional Metropolitan Sessions Judge-cum-Mahila Court at Hyderabad, the claim petitioners preferred this appeal.

2. The appellants/petitioners (hereinafter 'the petitioners') are the parents of one Gopalapuri Nitesh Prakash/deceased who died in vehicular accident dated 21.10.2006.

3. The petitioners' case in brief is that on 21.10.2006 Gopalapuri Nitesh Prakash/deceased while proceeding on his scooter bearing registration No.AP-10-AB-9386 (for short 'the scooter') near Saibaba temple, an A.P.S.R.T.C. bus bearing registration No.AP-9-Z-7590 (for short 'the bus') driven by its driver in rash and negligent manner dashed the scooter, thereby he slumped and received

severe injuries all over the body and was shifted to Gandhi Hospital and from there to Sigma Hospital, Secunderabad, there while undergoing treatment succumbed to his injuries. Thereupon, the parents of the deceased filed petition for compensation of Rs.10 lakhs.

4. The Tribunal after analyzing the evidence placed by the petitioners considered the delay in lodging F.I.R. was after the death of Prakash/deceased and the manner of occurrence stated in evidence of driver/RW-1, concluded that the petitioners failed to prove the involvement of the bus in the accident, much less the rash and negligent driving on the part of the driver and dismissed the petition.

5. In appeal, the petitioners contended that the tribunal ought to have observed that the accusations of rash and negligent driving is against the driver of the bus and the police after the due investigation charge sheeted the RW-1. Further even by the evidence of RW-1, his presence as driver of the bus at the place of the accident

and after the accident the police taking him to the police station are pointing against the respondents. Thus, the tribunal without properly appreciating the factual positions dismissed the claim petition, thus the impugned award is liable to be set aside. In addition, after the accident Prakash/deceased had undergone treatment in Sigma Hospital whereby the petitioners incurred medical expenditure of Rs.3,31,409/- which is proved by the evidence of PW-3. That apart, by the date of accident Prakash/deceased was pursuing intermediate and preparing for JEE examination. Thus, having bright future and even by the date of the accident he was earning Rs.6,000/- per month by giving tuitions and this fact has been substantiated by the PW-2. Thus, prayed for considering the material evidence and to grant just compensation.

6. In this context, the points arise for determination are:

- i) Whether the accident dated 21.10.2006 had occurred due to rash and negligent driving of the driver of the bus and whether the death of Prakash/deceased was due to injuries suffered in the accident?
- ii) Whether the petitioners are entitled for compensation as claimed?
- iii) To what relief?

7. POINT NO. (i):

(a) The father of the deceased/complainant as PW-1 testified that he lodged police report F.I.R./Ex.A-1 and narrated the manner of the accident. However as he is not the eyewitness, his evidence will not of any help to determine the fact of accident.

(b) However, the final report/Ex.A-2 is indicating that the police after investigation concluded that the driver of the bus is responsible for causing the accident and consequent death of Prakash/deceased.

(c) The driver of the bus was examined as RW-1 by the respondents. He deposed that on 21.10.2006 at relevant time he was the driver of the bus and en route after the Sigmas Hospital on a Moped (the scooter) overtook the bus from the left side and dashed one tea boy who was walking on the left side of the road, fell down on the road and received injuries, immediately he stopped the bus and shifted the injured to the hospital. Furthermore, asserted that no part of the bus touched or dashed the moped and there was no rash and negligent driving on his part. In cross examination, elaborated that the two wheeler came from behind the bus and while trying to overtake from the left side, a boy came across and the scooter dashed him. Thereby, the scooter fell on the left side behind the car and the rider of the scooter fell down and due to skidding he fell between the car and the bus and the two wheeler came in high speed. He also stated that the police patrolling vehicle came to the spot and took him to the police station. The

conductor took the injured to the hospital. The deceased received rubbing injuries to his skin, stomach and dorsum of the hand due to impact of the road and the boy (to whom the scooter dashed) received injuries to his hand.

(d) The respondents also filed Ex.B-1/the statistical and ticket accountal record of the bus which has been maintained by the respondents' employee of the bus on the relevant date. On it, in vernacular language, a report is noted that, while the bus was proceeding from police line, they heard a sound of moped as if an applying brakes fell down. Immediately, the driver stopped his bus and when checked the rider of the moped was underneath the body of the bus and the injured was shifted to Gandhi Hospital. Immediately they have informed the police and the police taken the licence from the driver.

(e) A close reading of the material is explicating that on 21.10.2006 there was an accident and the scooter

and bus were at the spot. The respondents' statement before the Court is that no part of the bus touched the scooter or the rider and the rider fell down on the extreme left side of the road. Whereas Ex:B-1/the statistical accountal record maintained by the staff of the bus is clearly showing that the rider of the scooter was found underneath the body of the bus. Thus, the version narrated by the driver/RW-1 and the record maintained by the respondents is in contradiction. Further even as per RW-1 immediately after the accident he was taken away by the police. In addition, the police after investigation concluded in the final report that the accident occurred due to rash and negligent driving of the driver of the bus. In the light of positive evidence and in absence of any corroboration the manner of the occurrence denoted by the RW-1 by placing reliance on the materials of investigating agency, it shall be concluded that the petitioners has established that the accident occurred due to rash and negligent driving of the bus by its

driver/RW-1. Therefore, the finding of the tribunal on this issue is set aside and the respondents are held vicariously liable to pay the compensation and the petitioners are entitled for compensation.

8. POINT NO.2 (ii): The petitioners claimed that after the accident the injured/deceased was shifted to Gandhi Hospital from there to Sigma Hospital wherein the treatment was given and while undergoing treatment as inpatient was admitted in emergency department with multiple injuries and in a state of hypovolemic shock, thereupon they started resuscitation and investigation and admitted into hospital. The investigation revealed fracture of pelvis. In spite of resuscitation measures, he died on 22.10.2006. Further stated that IP final bill/Ex.A-11 is of their hospital and Ex.A-12/bunch of medical bills prescribed. In cross examination stated that he has no idea regarding the treatment and he has no authorization to speak invoice of Med India Bill/Ex.A-12 for an amount of Rs.2,60,700/- and he is not related with the other bills

in Ex.A-12. When the evidence of PW-3 is carefully considered, the final bill Ex.A-11 can be taken as established. It is pertinent to note that in the cross examination it is not clarified that it is not given to the witness as to the use of medicine in Ex.A-12 during the treatment. However considering the assertion of the PW-1 and the bills which are filed in original and as the genuinity of the bills is not disputed, granting the total amount of Rs.3,31,009/- rounding of R.3,31,000/- towards medical treatment, is found reasonable.

9. The petitioners stated that by the date of the accident Prakash/deceased was aged 18 years and was brilliant student studying intermediate. Further by giving tuitions, he used to earn Rs.6,000/- per month.

10. Out of the documents filed by the petitioners, the driving licence/Ex.A-5, S.S.C.certificate/Ex.A-7 and passport/Ex.A-10 are reflecting that the date of birth of Prakash/deceased is 09.10.1989. Thus, the age of Prakash/deceased by the date of the accident is 18

years. With regard to income though the petitioners placed the evidence of PW-2 to support the claim that the deceased was giving tuitions, the material particulars as to how many students and the fees per student were missing. However, having regard to the pleaded academic record in Ex.A-7, A-8 and A-9 a monthly income of Rs.5,000/- can safely be taken on notional basis.

11. The Hon'ble Apex Court in the dictum of **National Insurance Company Limited Vs. Pranay Sethi**¹, while assessing the compensation in cases of death, the future prospects of income of the deceased/self-employee shall be included. Thus, having regard to the age, 40% of the income is taken towards future prospects. Further, in the authority of **Sarla Verma & others v. Delhi Transport Corporation and another**², as the deceased was a bachelor, 50% of the income shall be deducted towards personal expenses. Thus, the annual contribution of the

¹ (2017) 16 SCC 680

² (2009) 6 SCC 121

deceased to the petitioners would be Rs.42,000/-. If this sum is multiplied with the relevant multiplier to the age of the deceased i.e. 18, the total comes to Rs.7,56,000/-. The petitioners are entitled to this amount as loss of dependency.

12. In addition, the 1st and 2nd petitioners are also entitled for compensation under 'conventional heads' as prescribed in the dictum of **Pranay Sethi** (1 supra), i.e., Rs.15,000/- towards loss of Estate; Rs.15,000/- towards funeral charges.

13. Further, the Hon'ble Supreme Court, by reiterating the comprehensive interpretation of 'consortium' given in the authority of **Magma General Insurance co. Ltd. vs. Nanu Ram & ors.**³ and in the authority between **United India Insurance Co. Ltd. vs. Satinder Kaur @ Satwinder Kaur and others**⁴ fortified that the amounts for loss of consortium shall be awarded to the parents as, 'filial consortium' for the loss of their grown-up children,

³ (2018) 18 SCC 130

⁴ (2020) 9 SCC 644

to compensate their agony, love and affection, care and companionship of deceased children.

14. Accordingly, the 1st and 2nd petitioners are entitled for compensation of Rs.40,000/- each as filial consortium.

15. The Section 168 of the Motor Vehicles Act casts statutory duty on the Court to award just and reasonable compensation. Further the Hon'ble Apex Court in **Nagappa vs. Gurudayal Singh & others**⁵, reinforced the power of the Courts in awarding reasonable compensation, even if it is higher than the claimed. Accordingly, the above arrived amount is awarded to the petitioners as just and reasonable compensation.

16. Therefore, petitioners are eligible for the compensation in the following terms, viz., :

(i) Loss of dependency	: Rs.7,56,000.00
(ii) Loss of Estate	: Rs. 15,000.00
(iii) Funeral expenses	: Rs. 15,000.00
(iv) Filial Consortium	: Rs. 80,000.00

⁵ (2003) 2 SCC 274

(v) Medical expenditure : Rs.3,31,000.00

TOTAL: Rs.11,97,000.00

17. Resultantly, the appeal is allowed as under:

(i) the petitioners are awarded compensation of Rs.11,97,000/- (Rupees eleven lakhs ninety seven thousand only) with interest at 7.5% per annum with costs from the date of petition till realization;

(ii) the 1st and 2nd respondents are jointly and severally liable to pay the compensation;

(iii) the respondents are directed to deposit the awarded amount with interest within one (1) month from the date of receipt of a copy of this judgment;

iv) the 1st and 2nd petitioners are entitled to receive the said compensation amount in the ratio of 60:40;

(iv) on deposit of compensation amount with interest, the appellants/petitioners are permitted to withdraw entire amounts;

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

N. TUKARAMJI, J

Date:08.09.2022
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