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

M.A.C.M.A.No.1040 OF 2018

and

CROSS OBJECTIONS No. 18 OF 2019

COMMON JUDGMENT:

M.A.C.M.A.No.1040 of 2018 is preferred by the Telangana State Road Transport Corporation, questioning the judgment and decree, dated 9.10.2017 made in M.V.O.P.No.638 of 2014 on the file of the XXVII Additional Chief Judge-cum-Chairman, Motor Vehicle Accident Claims Tribunal, City Civil Court, Secunderabad (for short, the Tribunal). Challenging the very same judgment and decree, the claimants filed cross-objections No.18 of 2019 seeking enhancement of compensation.

2. For the sake of convenience, hereinafter the parties are referred to as per their array before the Tribunal.

3. The claimants filed a petition under Section 166 of the Motor Vehicles Act claiming compensation of Rs.19,50,000/- for the death of one G.Solomon (hereinafter referred to as "the deceased"), aged about 47 years, who

died in a motor vehicle accident that occurred on 06.10.2014. It is stated that on the fateful day, while the deceased was going from Alair to Jangaon on his Hero Activa bearing No.AP 29 AT 7286 and when he reached Kandigadda Thanda bus stage, one R.T.C. bearing No.AP 28 Z 5713 belonging to the respondent, being driven by its driver in a rash and negligent manner at high speed, dashed the deceased, as a result of which, the deceased fell down from his vehicle and died on the spot. In this connection, a case in Crime No. 148 of 2014 was registered by the Alair Police against the driver of the R.T.C. for the offence punishable under Section 304-A of I.P.C. According to the claimants, the deceased was getting an income of Rs.18,000/- per month as a Car Driver. Therefore, the claimants laid a claim for Rs.19.50 lakhs against the respondent-RTC.

4. Before the Tribunal, the respondent-R.T.C. filed counter denying the manner in which the accident took place and also denying the age, avocation and income of the deceased. It is also contended that the compensation

claimed is excessive and prayed to dismiss the claim-petition.

5. After considering the oral and documentary evidence on record, the tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the offending bus by its driver and awarded total compensation of Rs.17,40,000/- with interest @ 7.5% per annum to be paid by the respondent. Aggrieved by the said order, the R.T.C. filed the appeal questioning the quantum of compensation and seeking enhancement of compensation, the claimants filed the cross-objections.

6. Heard both sides and perused the material available on record.

7. Learned Standing Counsel appearing for the appellant has submitted that there was contributory negligence on the part of the deceased but the Tribunal did not consider the said aspect and erred in holding that the accident occurred due to rash and negligent driving of the driver of the R.T.C. bus. It is further contended that though no documentary evidence was produced by the

claimants with regard to the earnings, the Tribunal erred in fixing the income of the deceased at Rs.13,000/- per month. It is contended that the Tribunal erred in deducting 1/4th towards personal expenses of the deceased instead of 1/3rd. Furthermore, the Tribunal erred in awarding Rs.1,00,000/- towards loss of consortium, Rs.1,00,000/- towards loss of love and affection and Rs.19,000/- towards funeral expenses and as per the judgment of the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***[1] the claimants are entitled only for Rs.70,000/- under conventional heads.

8. On the other hand, the learned counsel for the claimants, cross-objectors, has contended that considering the contents of the charge sheet, which was marked as Ex.A4, the Tribunal has rightly held that the accident occurred due to the rash and negligent driving of the driver of the R.T.C. bus. It is further contended by the learned counsel for the claimants that as the dependants of the deceased are four in number, as per the decision of the

[1] 2017 ACJ 2700

Apex Court in ***Sarla Varma v. Delhi Transport Corporation***[2], the deduction towards personal expenses of the deceased should be 1/4th and the Tribunal has rightly deducted the same. However, as per the judgment of the Apex Court in ***Pranay Sethi*** (supra), the claimants are entitled to future prospects but the Tribunal did not award any future prospects. Therefore, it is argued that the income of the deceased may be taken into consideration by adding future prospects for assessing loss of dependency and prayed to enhance the same.

9. As regards the contributory negligence, the Tribunal has framed Issue No.1 as to whether the pleaded accident occurred resulting in death of the deceased due to any rash and negligent driving of the vehicle i.e., R.T.C. bus bearing No.AP 28 Z 5713 by its driver, and considering the documentary evidence i.e., Ex.A1-F.I.R., Ex.A2, inquest report, Ex.A4, charge sheet and Ex.A5, M.V.I. Report, has categorically observed that the accident occurred due to the rash and negligent driving of the driver of the R.T.C. bus and has answered the issue in favour of the claimants

[2] (2009) 6 SCC 121

and against the respondent. Although it is argued by the learned Standing Counsel for the RTC that there was contributory negligence on the part of the deceased in causing the accident, it did not take any steps to examine the driver of the bus or any passenger of the bus who is the best person to speak in this regard. 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 R.T.C. bus.

10. Coming to the quantum of compensation, the claimants claimed that the deceased was aged about 47 years, working as a Car Driver with Rules APP Technology, Hitech City, Hyderabad and getting salary of Rs.18,000/- per month and got marked Ex.A6, salary certificate. As per Ex.A6, salary certificate and Ex.A10, driving licence, the deceased was a professional driver. Though the claimants produced Ex.A6, salary certificate, they have not substantiated the same by examining the employer to prove the income of the deceased. However, considering the age and avocation of the deceased, the Tribunal has

rightly fixed the income of the deceased at Rs.13,000/- per month. Inasmuch as the deceased was a skilled driver and having fixed salary and aged about 47 years, as per the decision of the Apex Court in ***Pranay Sethi*** (supra), 25% to the established income of the deceased needs to be added towards future prospects. By adding 25% to the income of the deceased, the future monthly income of the deceased comes to Rs.16,250/- (Rs.13,000/- plus Rs.3,250/- being 25% thereof). Inasmuch as the dependants are four in number, the tribunal has rightly deducted 1/4th towards personal expenses of the deceased. Therefore, by deducting 1/4th from Rs.16,250/-, the net monthly contribution to the family comes to Rs.12,187/- per month. Since the deceased was 47 years at the time of the accident, the appropriate multiplier is '13'. By applying the multiplier '13', the loss of dependency comes to Rs.19,01,172/- (Rs.12,187/- x 12 x 13). That apart, as per the decision of the Apex Court in ***Pranay Sethi*** (supra), the claimants are entitled to Rs.77,000/- under the conventional heads, but not Rs.2,19,000/- as was awarded by the tribunal. Thus, in all, the claimants are entitled for the total compensation of Rs.19,78,172/-.

11. At this stage, the learned Standing Counsel for the R.T.C. submits that the claimants claimed only a sum of Rs.19,50,000/- as compensation and the quantum of compensation which is now awarded would go beyond the claim made which is impermissible under law.

12. In view of the Judgments of the Apex Court in ***Laxman @ Laxman Mourya Vs. Divisional Manager, Oriental Insurance Company Limited and another***[3] and ***Nagappa Vs. Gurudayal Singh***[4] the claimants are entitled to get just compensation even if it is more than the amount what was claimed by the claimants.

13. In the result, while dismissing the M.A.C.M.A. No.1040 of 2018 filed by the R.T.C., the cross-objections filed by the claimants are allowed enhancing the compensation amount from Rs.17,40,000/- to Rs.19,78,172/-. The enhanced amount shall be

[3] (2011) 10 SCC 756
[4] 2003 ACJ 12 (SC)

apportioned between the claimants in the same proportion in which original compensation amounts were directed by the Tribunal. The enhanced compensation shall carry interest at 7.5% per annum from the date of petition till the date of realization. Time to deposit the amount is two months. However, the claimants are directed to pay deficit court fee on the enhanced compensation amount. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE M. G. PRIYADARSINI

10.01.2023
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