

HONOURABLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A.Nos.3288 of 2014 and 1404 of 2015

COMMON JUDGMENT:

These two appeals are being disposed of by this common judgment since M.A.C.M.A.No.3288 of 2014 filed by the claimants challenging the quantum of compensation as meagre and M.A.C.M.A. No. 1404 of 2015 filed by the Andhra Pradesh State Road Transport Corporation (presently, TSRTC) challenging its liability to pay the compensation on the ground of contributory negligence on the part of the deceased, are directed against the very same award and decree, dated 08.01.2014 made in M.V.O.P.No.320 of 2012 on the file of the Motor Vehicle Accident Claims Tribunal-cum-Special Sessions Judge for trial of cases under SCs & STs (POA) Act, 1989-cum-VII Additional District & Sessions Judge, Ranga Reddy District at L.B. Nagar (for short “the Tribunal”).

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

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

The claimants filed a petition under Section 163-A of the Motor Vehicles Act, 1988 against the respondents 1 and 2-RTC, claiming compensation of Rs.10,00,000/- for the death of one

Shikar (hereinafter referred to as “the deceased”), who died in the accident that occurred on 15-12-2011. According to the claimants, on the fateful day, while the deceased was proceeding on the Bus bearing No. AP 11Z 6991, owned by the respondents, from Moosapet to Kukatpally, when the bus reached near Metro Super Bazaar, situated at Kukatpally near Petrol Bunk, the driver of the bus alighted the bus and when the deceased was trying to get down the bus as there was a bus stop, the driver gave a jerk, started the bus with sudden speed. As a result, the deceased fell down from the bus and the bus ran over the deceased. The deceased died on the spot. According to the claimants, the deceased was aged about 24 years, bachelor, working in Spider Broad Bank Services Pvt. Ltd., and was earning Rs.18,000/- per month. Therefore, they laid the claim against the respondents seeking compensation of Rs.10.00 lakhs towards compensation.

4. Before the Tribunal, the respondents-RTC 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 further contended that the compensation claimed is excessive and exorbitant and prayed to dismiss the claim-petition.

5. Considering the oral and documentary evidence available on record, the Tribunal held that the accident occurred due to the negligent driving of the Bus by its driver and allowed the O.P. in part awarding total compensation of Rs.8,70,000/- to be paid by the respondents jointly and severally with interest at 6% per annum. Challenging the same, the present appeals came to be filed by the claimants and the RTC respectively.

6. Heard both the learned counsel and perused the material available on record.

7. Although the claim petition was filed under Section 163-A of the Motor Vehicles Act, the tribunal having framed the issued No. 1 *whether there was an accident resulting death of Mr. Srikar while the bus driver gave a jerk started with high speed due to which he fell down from the bus and the same was ran over Mr. Shikar*, and having considered the evidence of P.W.2, a co-traveller in the bus and eyewitness to the accident, and Ex.A.2, charge sheet, filed by the police against the driver of the bus for the offence under Section 181 of the M.V. Act, decided the issue holding that the accident took place only due to the rash and negligent driving of the driver of the bus. Thus, although the petition was filed under Section 163-A of the M.V. Act, the tribunal, basing on its findings on issue No. 1, has rightly

proceeded to award compensation as if the claim petition has been filed under Section 166 of the M.V. Act.

8. The main contention raised by the learned Standing Counsel for the RTC, appellant in MACMA No. 3288 of 2014, is that the tribunal has committed grave error in holding that there is no contributory negligence on the part of the deceased. It is contended that when the bus was stopped, driver got down from the bus, the question of starting and driving the bus does not arise. In fact, the deceased got down the running bus and thus contributed to the accident and therefore, the deceased is also responsible for the contributory negligence, which fact has not been considered by the tribunal. As regards the quantum of compensation, it is contended that in the absence of any cogent evidence as to the income of the deceased, the compensation of Rs.8,70,000/- awarded by the tribunal is on higher side and needs to be reduced.

9. On the other hand, the learned counsel for the claimants, contended that the claimants have established the fact that the deceased was earning Rs.18,000/- per month working as technician in Spider Broad Band Services Pvt. Ltd., Ameerpet by examining P.W.3, employer, and Ex.A.5, salary certificate, apart from Exs.X.1 and X.2, identity card and the appointment order,

respectively. But, the tribunal did not take the said evidence into consideration without there being any reason. It is further contended that as per the principles laid down by the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***¹, considering the age of the deceased 24 years, future prospects at 40% to the established income of the deceased needs to be added. It is lastly contended that as per the decision of the Apex Court in ***Pranay Sethi's case*** (1 supra), the claimants are entitled to Rs.33,000/- under conventional heads.

10. The learned Standing Counsel for the RTC assails that there was contributory negligence on the part of the deceased as he got down from the running bus and met with the accident. However, as seen from the record, after due investigation into the crime, police laid the charge sheet against the driver of the offending Bus stating that the accident occurred due to the rash and negligent driving of the offending vehicle. That apart, P.W.2, the eyewitness to the accident who is also a co-passenger, clearly stated that the accident occurred only due to the rash and negligent driving of the Bus by its driver. Furthermore, the RTC did not take any steps to summon the

¹ 2017 ACJ 2700

driver of the offending Bus to prove that there was contributory negligence on the part of the deceased, who is the best person to speak in this regard. Further, no contra evidence was elicited in the cross-examination of P.W. 2, eyewitness to the accident. Therefore, considering the evidence of P.W.2 and Ex.A.2, charge sheet, the tribunal has rightly held that the accident occurred only due to the rash and negligent driving of the bus by its driver. In these circumstances, the contention of the learned Standing Counsel that that there was contributory negligence on the part of the deceased does not merit consideration and the same is rejected.

11. Coming to the aspect of quantum of compensation, the claimants asserted that the deceased was working as technician in Spider Broadband Services Pvt. Ltd. They have also filed the salary certificate of the deceased which is marked as Ex.A.5 to the effect that prior to the accident, the deceased was drawing a salary of Rs.18,000/-. They have also proved Ex.A.5 by examining the employer of the deceased as P.W.3. That apart, they have also filed Ex.X.1, identity card issued by Spider Broadband Services Pvt. Ltd., and Ex.X.2, appointment order, dated 16.07.2007. But there was no discussion as to the evidence of P.W.3 by the tribunal except saying that the

claimants have not filed any document to show that the deceased was an approved technician in support of Exs.X.1 & X.2. When the claimants have established the income of the deceased with cogent evidence, the tribunal ought not to have brushed aside the said evidence. In these circumstances and considering the evidence of P.W.3, Ex.A.5, Ex.X.1 & X.2, this Court is inclined to fix the monthly income of the deceased at Rs.15,000/-. As rightly contended by the learned counsel for the claimants, considering the fact that the deceased was 24 years at the time of accident, the claimants are entitled to addition of 40% towards future prospects to the established income, as per the decision of the Apex Court in **Pranay Sethi** (1 supra). Therefore, future monthly income of the deceased comes to Rs.21,000/- (Rs.15,000/- + Rs.6,000/- being 40% thereof). From this, 50% is to be deducted towards personal expenses of the deceased following **Sarla Verma v. Delhi Transport Corporation**² as the deceased was bachelor. After deducting 50% amount towards his personal and living expenses, the contribution of income by the deceased to the family comes to Rs.10,500/- per month. Since the deceased was 24 years by the time of the accident, the appropriate multiplier is '18' as per the decision reported in **Sarla Verma**

² 2009 ACJ 1298 (SC)

(supra). Adopting multiplier '18', the total loss of dependency of the claimants is Rs.22,68,000/- (Rs.10,500 x 12 x 18). In addition thereto, the claimants are also entitled to Rs.33,000/- under the conventional heads as per **Pranay Sethi's** (supra). That apart, the claimants, being the parents of the deceased, are granted Rs.40,000/- each towards filial consortium as per the decision of the Apex court in ***Magma General Insurance Company Limited v. Nanu Ram @ Chuhru Ram and others***³. Thus, in all the claimants are entitled to Rs.23,81,000/-.

12. In the result, while dismissing M.A.C.M.A.No.1404 of 2015 filed by the RTC, M.A.C.M.A.No.3288 of 2014 filed by the claimants stands allowed by enhancing the compensation amount awarded by the Tribunal from Rs.8,70,000/- to Rs.23,81,000/-. The enhanced amount shall carry interest at 7.5% per annum from the date of filing of the O.P. till the date of realization, payable by respondent Nos.1 and 2 jointly and severally. The enhanced amount shall be apportioned in the manner as ordered by the Tribunal. Time to deposit the compensation is two months from the date of receipt of a copy of this order. However, the claimants are directed to pay the deficit court fee on the enhanced compensation. There shall be no order as to costs.

³ (2018) 18 SCC 130

Miscellaneous petitions, if any, pending shall stand closed.

02.01.2023
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M.G.PRIYADARSINI,J

HONOURABLE SMT. JUSTICE M.G.PRIYADARSINI

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DATE: 02-01-2023