

THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

M.A.C.M.A. No. 1024 of 2010

AND

M.A.C.M.A. No. 2869 of 2011

COMMON JUDGMENT:

These two appeals are arising out of the order dated 05.03.2010 in O.P.No.1758 of 2008 on the file of Motor Accidents Claims Tribunal-cum-XXII Chief Judge, City Civil Court, Hyderabad. MACMA No.1024 of 2010 is filed by APSRTC (for short, the Corporation); and MACMA No.2869 of 2011 is filed by the claimants. The parties are referred as petitioner and respondent as arrayed in the original petition.

2. This is a case of death occurred in a motor vehicle accident on 28.06.2008 at 6:00 PM. The accident occurred due to the use of motor vehicle in a public place. On the fateful day, the deceased Yellaiah, while going in a lorry towards Chinakaparty from Suryapet, when the lorry reached near Kamineni Hospital, Narketpally, an RTC bus came in opposite direction and dashed against the lorry. As a result, the deceased sustained fatal injuries and died on the spot. The legal representatives of the deceased, petitioners 1 to 6, have claimed compensation of Rs.8,00,000/- on account of the death of the deceased in the accident.

3. The 1st petitioner is the wife and the petitioners 2 to 5 are children; and petitioner No.6 is the mother of the deceased. According to them, the deceased was doing civil contracts for Government and Private Sector and earning Rs.10,000/- per month. He was also having a borewell rig machine and he used to earn Rs.5,000/- per month on the borewell machine. Due to his death, the petitioners lost their dependency. Therefore, they filed the above claim petition.

4. Respondents 1 and 2 are officials of APSRTC. They filed a common counter denying the averments in the claim, and mainly contended that the accident occurred due to rash and negligent driving of the APSRTC bus, and that the claim of the petitioners is excessive. The Tribunal has framed three years, and answered the 1st issue, with regard to the aspect of negligence, holding that the accident occurred due to rash and negligent driving by the driver of the RTC bus; and in respect of the 2nd issue, the Tribunal held that the petitioners are entitled to compensation against respondents 1 and 2; and in the 3rd issue, awarded compensation of Rs.5,20,000/- with interest at 7% per annum.

5. Aggrieved by the orders passed by the Tribunal, the appellant RTC has preferred the appeal mainly on two grounds. Firstly, it is contended that the driver of the RTC bus was not negligent in driving the bus. Secondly, it is contended that the quantum of compensation awarded by the Tribunal is highly excessive. It is further contended on behalf of the APSRTC that PW2 was an eye witness to the accident and according to him this is a case of head-on collision. In the case of head-on collision, the liability has to be apportioned on both the vehicles at 50% each, whereas the Tribunal held that the driver of APSRTC was only negligent.

6. It is appropriate to refer to the findings of the Tribunal in this regard. According to the Tribunal, PW2 was an eye witness to the accident and he has narrated the manner in which the accident occurred. According to him, the RTC bus came in opposite direction driven in a rash and negligent manner and dashed against the lorry.

7. It is obvious that nothing was elicited in the cross examination of PW2 except giving suggestions to him with regard to the negligence on the part of the driver of the lorry, that the accident occurred due to the negligence of the driver of the lorry which was denied.

8. The Tribunal has rightly placed reliance on Ex.A1-FIR and Ex.A2-chargesheet and came to the conclusion that they corroborated the evidence of PW1 regarding the manner in which the accident occurred and the rash and negligent act on the part of the accused. Therefore, no doubt, it may be a case of head-on collision, but in view of the evidence of an eye witness and the documents Exs.A1 and A2, it can be safely concluded that this is a case of negligence on the part of the driver of APSRTC bus which resulted in the accident. Therefore, I do not see any valid grounds to interfere with the findings of the Tribunal in this regard.

9. The other contention of the learned Standing Counsel for APSRTC is that the Tribunal awarded excessive compensation. It is contended that there is no proof for the income of the deceased as Rs.4,000/- per month, and the Tribunal has taken into consideration his income as Rs.4,000/- per month which is excessive.

10. It is contended on behalf of the claimants that the deceased was a Civil Contractor undertaking works of Government and Private sector and earning Rs.10,000/- per month and he was also having borewell rig machine and he was earning Rs.5,000/- per month on that borewell rig machine but the Tribunal has taken the income of the deceased as Rs.4,000/- per month which is quite less than the income of the deceased.

11. As a matter of fact, there is no documentary proof for the fact that the deceased was a Contractor and he used to undertake the works of the Government and Private Sector and he owns a borewell rig machine. The Tribunal has taken the notional income of the deceased as Rs.4,000/- per month though it is stated that he was working as a Contractor and he was possessing a borewell rig machine as he could not produce any documentary proof. The Tribunal could have taken his notional income as Rs.5,000/- per month as he was a young person aged about 38 years, attending to Government and Private Sector Contract works and he must have been getting not less than Rs.5,000/- per month. In the grounds of appeal filed by the claimants, they have stated that the deceased was earning a sum of Rs.5,000/- per month on the borewell rig machine. Therefore, notional income of the deceased can be taken as Rs.5,000/- per month.

12. It is contended on behalf of the claimants that the Tribunal has deducted $1/3^{\text{rd}}$ towards personal expenditure of the deceased even though the dependency of the deceased was 6 members in the family.

13. In the light of the decision rendered by the apex Court in Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another¹, if the dependency is 4 to 6 members, $1/4^{\text{th}}$ amount is to be deducted towards personal expenditure of the deceased. In this case, $1/3^{\text{rd}}$ was deducted by the Tribunal, which is incorrect. Therefore, after deduction of $1/4^{\text{th}}$ of the income towards personal expenditure, the monthly contribution of the deceased would be Rs.3,750/-, and the yearly contribution would come to Rs.45,000/-. Further, as per Sarla Verma (1 supra), the multiplier applicable to the age of 38 years is '15'. Therefore, the loss of dependency would come to Rs.45,000/-

¹ 2009 (6) SCC 121

$\times 15 = \text{Rs.}6,75,000/-$. Therefore, the claimants are entitled to an amount of $\text{Rs.}6,75,000/-$ towards loss of dependency.

14. It is further contended on behalf of the claimants that the Tribunal awarded $\text{Rs.}15,000/-$ to the 1st petitioner under the Head of Loss of Consortium which requires to be enhanced. Likewise, the amount of $\text{Rs.}5,000/-$ awarded to petitioners 2 to 5 towards loss of love and affection also requires to be enhanced. It is also contended that the Tribunal has not awarded any amount towards funeral expenses and loss of estate.

15. In the light of the judgment in *Rajesh Kumar v. National Insurance Co. Ltd.*, the compensation to the 1st petitioner towards loss of consortium is enhanced to $\text{Rs.}50,000/-$; and the compensation to petitioners 2 to 5 towards loss of love and affection is enhanced to $\text{Rs.}1,00,000$ (i.e., @ $\text{Rs.}25,000/-$ for each of the petitioners 2 to 5). In view of the decision of the Hon'ble apex Court in *Ramilaben Chinubhai Parmar and Ors. v. National Insurance Co. and Ors.*², an amount of $\text{Rs.}50,000/-$ is awarded towards funeral expenses and loss of estate.

16. The compensation awarded by the Tribunal is enhanced as shown in the following tabular format.

Head	Compensation awarded by the Tribunal	Compensation enhanced
Loss of dependency	$\text{Rs.}4,80,060/-$	$\text{Rs.}6,75,000/-$
Loss of consortium (awarded to 1 st petitioner)	$\text{Rs.}15,000/-$	$\text{Rs.}50,000/-$
Loss of love and affection (awarded to petitioners 2 to 5)	$\text{Rs.}20,000/-$	$\text{Rs.}1,00,000/-$ (@ $\text{Rs.}25,000/-$ each)
Loss of estate; and Funeral expenses	Nil	$\text{Rs.}50,000/-$
Total	$\text{Rs.}5,15,060/-$ (awarded $\text{Rs.}5,20,000/-$)	$\text{Rs.}8,75,000/-$

² MANU/SC/0356/2014

17. At this juncture, it is contended by the learned counsel for the claimants that the Tribunal has awarded interest at 7% per annum and the same requires to be enhanced. In view of the decision of the Hon'ble Supreme Court in Dharampal and others Vs. U.P. State Road Transport Corporation³, this Court feels it appropriate to award interest at 7.5% per annum from the date of petition till realization.

18. In the result, the appeal filed by the claimants is allowed by modifying the award passed by the Tribunal, enhancing the compensation from Rs.5,20,000/- to Rs.8,75,000/- with proportionate costs and interest at 7.5% per annum from the date of petition till realization. Consequently, the appeal filed by the Corporation is dismissed. The claimants shall pay the Court Fee for the amount awarded over and above the claimed amount. The Corporation is directed to deposit the compensation within two months from the date of receipt of a copy of this order. On such deposit, the claimants are permitted to withdraw their respective shares as apportioned by the Tribunal.

No costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDI SEVA SHYAM PRASAD, J

31st March, 2017

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³ MANU/SC/7680/2008

THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD



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