



IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

MONDAY ,THE FOURTH DAY OF MARCH
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE A V RAVINDRA BABU

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 421 OF 2016

Between:

1. APSRTC REP BY ITS VICE CHAIRMAN & M.D., HYD & ANR, Rep by its Vice Chairman & Managing Director Owner of Bus AP-27Z-0041, Bus Bhavan, Musheerabad, Hyderabad
2. The Regional Manager, APSRTC, RTC Bus Stand Complex, Ongole

...APPELLANT(S)

AND

1. PAHAN SUBHANI PRAKASAM DIST ANR, S/o. Hasan Khan Aged about 46 years, R/o. Ramakrishna Colony, Opp. Power Office, Tarlapadu Road Markapur, Prakasam District.
2. Pathan Khadeerun, W/o. Subhani Aged about 39 years, R/o. Ramakrishna Colony, Opp. Power Office, Tarlapadu Road Markapur, Prakasam District.

...RESPONDENTS

The Court made the following:

JUDGMENT:-

The present M.A.C.M.A. is directed against the award, dated 02.03.2015 in M.V.OP.No.105 of 2014, on the file of Motor Accident Claims Tribunal-cum-VII Additional District Judge, Ongole, Prakasham District ("Tribunal" for short), whereunder the Tribunal as against the claim of the claimants to grant compensation of Rs.7,00,000/-, on account of death of their son in a motor vehicle accident occurred on 02.02.2014 at 11.30 p.m., near Konakanamitla Village on Markapur-Podili

road, awarded the said sum as compensation with interest @9% p.a., from the date of petition till the date of realization. The unsuccessful respondents filed the present M.A.C.M.A.

2. The parties to this M.A.C.M.A. will hereinafter be referred to as described before the learned Tribunal for the sake of convenience.

3. The case of the claimants before the Tribunal in brief, according to the averments in the Motor Vehicle accident claim, is that:

(i) The claimants are the parents of the deceased. On 02.02.2014 night at about 09.30 p.m., one Murali of Markapur contacted auto bearing No.AP 27 TU 1573 to take new lorry tyres to Konakamitla as his lorry tyres were burst. Auto driver accepted and loaded new lorry tyres in his auto. On the request of the said Murali, the deceased accompanied with him in the auto. When the auto crossed Konakanamitla and when they went to 1 ½ k.m., towards Podili side, at about 11.30 p.m., one R.T.C. bus bearing No. AP 27 Z 0041 ('offending vehicle' for short) of Kanaigiri Depot going to Hyderabad came in opposite direction with high speed and in a rash and negligent manner, dashed the auto, as a result, the deceased, auto driver and Murali received injuries. They were shifted to Podili Hospital in 108 ambulance. The deceased succumbed to injuries.

(ii) The deceased was aged 21 years and he was hale and healthy by the time of accident. The deceased was working as a driver and earning more than Rs.10,000/- per month. A case in Crime No.6 of 2014 under Section 304-A of IPC was registered in Konakanamitla police station. Due to sudden demise of the deceased the petitioners/claimants are deprived of life.

4. The respondent No.2 remained *exparte*. The respondent No.1 got filed written statement resisting the prayer on the ground that the petitioners have to prove the manner of the accident, age, income and avocation of the deceased. There was no negligence on the part of the driver of the R.T.C. bus. Negligence was only on the part of the deceased. The driver of the bus observed one stationed lorry on the road side margin, reduced the speed of the bus and was proceeding slowly on the left side margin. Then one auto came opposite direction on its left margin and came on the road and hit on the right side of the bus and caused the accident. The relatives of the deceased and others got managed the police and fabricated a case. Hence, respondent No.1 is not liable to pay any compensation. The claim of interest is excessive. Hence claim is liable to be dismissed.

5. Basing on the above pleadings, the learned Tribunal settled the following issues for trial:

- (1) Whether the Pathan Mahammad Khan died in the accident caused by the motor vehicle i.e., A.P.S.R.T.C. bus bearing No. AP 27 Z 0041 on 02.02.2014 at about 11.30 p.m., near Konakanamitla village on Markapur-Podili road?
- (2) Whether the petitioners are entitled to the compensation claimed and from whom?
- (3) To what relief?

6. During the course of enquiry before the Tribunal, petitioner No.1 examined himself as PW.1 and further examined PW.2 driver of the auto and got marked Exs.A1 to A.8. Respondent No.1 examined the driver of the R.T.C. bus as RW.1.

7. The Tribunal on hearing both sides and on considering the oral as well as documentary evidence, answered the issues in favour of the claimants and against the respondents and awarded a sum Rs.7,00,000/- as compensation along with interest @9% per annum from the date of petitioner till the date of realization, payable by both respondent Nos. 1 and 2 and apportioned the same equally between claimants.

8. Felt aggrieved of the award of the Tribunal, the unsuccessful respondents in the M.V.O.P. filed the present M.A.C.M.A.

9. In the light of the contentions advanced, now in determining the M.A.C.M.A., the points for determination are as follows:

(1) Whether the accident was occurred due to rash and negligent driving of the driver of the offending vehicle/R.T.C. bus bearing No.AP 27 Z 0041?

(2) Whether the award, dated 02.03.2015 in M.V.OP.No.105 of 2014, on the file of Motor Accident Claims Tribunal-cum-VII Additional District Judge, Ongole, Prakasham District, in awarding the compensation of Rs.7,00,000/- is sustainable under law and facts and whether there are any grounds to interfere with the award?

Point Nos.1 and 2:

10. PW.1/claimant No.1 before the Tribunal filed his chief examination put forth the facts in tune with the pleadings. Through his examination, Exs.A1 to A8 were marked. Ex.A1 was the attested copy of F.I.R. in Crime No.6 of 2014 of Konakanamitla police station. Ex.A2 was the attested copy of postmortem certificate. Ex.A3 was the attested copy of M.V.I. report. Ex.A4 was the attested copy of charge sheet. Ex.A5 was the S.S.C. certificate of the deceased Ex.A6 was the Transfer Certificate of the deceased. Ex.A7 was the driving license of the deceased. Ex.A8 was the attested copy of driving license of petitioner No.1.

11. Further the petitioners chosen to examine PW.2 driver of the auto bearing No.AP 27 TU 1573. In his chief examination, he deposed in support of the case of the claimants. According to his evidence, A.P.S.R.T.C. bus came in high speed and dashed the

auto, as such the deceased died. By then, he (PW.2) was driving the auto.

12. During the cross-examination, inconsistent defence was set forth before PW.1. PW.1 denied that the deceased driven the auto in a rash and negligent manner. But the fact remained is that driver of the auto was PW.2. It is a case where basing on the statement of PW.2, F.I.R. was registered and it was investigated and ultimately charge sheet was filed alleging rash and negligent act against the driver of the A.P.S.R.T.C. bus bearing No.AP 27 Z 0041. Though the RW.1 the driver of the R.T.C. bus stepped into the witness box and deposed that he did not drive the bus in a rash and negligent manner, but in cross-examination, he admitted that the factum of death of the deceased in the motor vehicle accident involvement of A.P.S.R.T.C. bus. He admitted that he did not lodge any report with the police. It is admitted fact after that after the accident, he was suspended for a period of five months. Though PW.1 was not a witness, but PW.2 was a witness to the occurrence and on account of the accident, police investigated the case and filed charge sheet against RW.1 alleging rash and negligent act. Hence, evidence on record categorically proves that the accident occurred was due to rash and negligent driving of the driver of the A.P.S.R.T.C. bus. There was no dispute about that the death of the deceased even the admission made by RW.1 in the motor

vehicle accident. The documentary evidence i.e., inquest nama and postmortem report proves the fact that the death of the deceased was on account of the serious injuries received in the accident. Hence, the Tribunal rightly held issue No.1 infavour of the claimants.

13. Coming to the liability of the appellants, there is no dispute as they are the owners of the offending vehicle. Hence, they are jointly and severally liable to pay compensation to the claimants who are no other than the parents of the deceased. It is not at all in dispute.

14. Now, coming to the quantum of the compensation, case of the claimants was that the deceased was working as driver and getting a sum of Rs.10,000/- per month. PW.1 admitted in cross-examination that she has no proof to show that the deceased was working as driver and was getting such income. However, the fact remained is that the copy of S.S.C. certificate and Transfer Certificate and driving license of the deceased were filed. So, it is the case where the deceased studied up to S.S.C. and obtained driving license in the year 2011, to drive light motor vehicle cab. So, on account of the aforesaid educational qualifications, it cannot be denied that the deceased was having a driving license. There was no proof that he was working in any company or under any person, by way of self employment or on fixed salary, but the Tribunal negatived the contention of

the claimants that the deceased was earning Rs.10,000/- per month, but considered the income of the deceased as Rs.6,000/- per month. The Tribunal on guess work arrived at the income of the deceased, basing on notional theory as that of Rs.6,000/- per month. What the Tribunal did is that it added 50% of the income from out of Rs.6,000/- towards future prospects and arrived at the income as Rs.9,000/- and deducted 50% of the income towards the personal expenses and arrived at the net income as Rs.54,000/- and applied the multiplier 18 and arrived at Rs.9,72,000/- towards loss of earnings, the Tribunal considered the loss of estate as Rs.1,00,000/-, loss of love and affection Rs.1,00,000/- and funeral expenses as Rs.25,000/- and totally arrived at Rs.11,97,000/-. As the claimants claimed only Rs.7,00,000/-, restricted the claim to Rs.7,00,000/- and awarded such compensation.

15. Now the contention of the appellant is that the compensation arrived at by the Tribunal is not proper, as such, it is liable to be reduced.

16. Though there was no evidence to show that the deceased was working continuously as a driver in any company or under a person or he was on self employment by running any cab services etc, but considering the educational qualifications and driving license possessed by the deceased way back in the year 2011, the Tribunal arrived at his earnings basing on notional

theory on guess work. It is to be noted that according to the decision of Hon'ble Supreme Court in **Smt.Sarala Verma and others Vs. Delhi Transport Corption and another**¹ case, the future prospects have to be considered in case the deceased had permanent income. 50% of the future prospects has to be considered if the deceased was aged below 40 years and addition should be 30% if the age of the deceased was between 40 to 50 years. The Hon'ble Supreme Court further held that where the deceased was self employed or was on a fixed salary without any provision for annual increments, Courts will visually take the actual income at the time of death. The Hon'ble Supreme Court in **National Insurance Copany Ltd., Vs. Pranay Sethi and others**², held that even in case of the deceased is self employed or on a fixed salary, the addition of 40% should be where the deceased was below the age of 40 years and 25% where n the deceased aged between 40 and 50 and 10% where the deceased was aged between 50 to 60 years.

17. Now, as evidence from the judgment of the Tribunal, without there being any basis and without any reference to the decision in **Sarla verma's** case, referred (1) supra, the Tribunal arrived at 50% towards income towards future prospects, which is not at all tenable. The date of the judgment of the Tribunal was 02.03.2015, by then the judgment in **Sarla Verma's** case,

¹ (2009)6 Supreme Court Cases 121

² 2017 (16) SCC 618

referred (1) supra, was in force. As this Court already pointed out that there was no evidence that the deceased was self employed by running any cab services or he was on any fixed salary. So, the case on hand shows that it is not at all a case where future prospects can be awarded.

18. The figure arrived at by the Tribunal treating the income of the deceased as Rs.6,000/- per month, appears to be reasonable. Following principle laid down in **Sarla verma's** case, referred (1) supra, 50% of the income of the deceased is to be deducted towards the personal expenses. So, if that is done, net income of the deceased would be Rs.3,000/- per month. Annual net income would be Rs.36,000/-. Following multiplier as held in **Sarla verma's** case, referred (1) supra, multiplier 18, would amount to Rs.6,48,000/- (Rs.36,000/- X 18 = Rs.6,48,000/-). According to the decision in **Pranay Sethi's case referred (2) supra**, the reasonable figure under conventional heads i.e., loss of estate and loss of consortium and funeral expense should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. So, it would amount to Rs.70,000/-. So, if the amount of Rs.6,48,000/- and Rs.70,000/- is considered, it would amount to Rs.7,18,000/- [Rs.6,48,000/- + Rs.70,000/- = Rs.7,18,000/-]. The calculations arrived at by the Tribunal as if the claimants were entitled Rs.11,97,000/-, were nothing but erroneous. However, even on the basis of the

calculation as aforesaid made by this Court, the compensation that was awarded by the Tribunal is less than Rs.7,18,000/-. There is no cross appeal filed by the claimants. Under the circumstances, as the claimants are entitled for the compensation not less than Rs.7,00,000/-, this Court does not see any ground to set aside the award of the Tribunal.

19. In the result, M.A.C.M.A. is dismissed, directing the appellants to deposit the rest of the compensation within a period one month from the date of judgment of this Court. No order as to costs.

Consequently, miscellaneous applications pending, if any, shall stand closed.

JUSTICE A.V. RAVINDRA BABU

Dt.04.03.2024.
Vnb

THE HON'BLE SRI JUSTICE A.V. RAVINDRA BABU

M.A.C.M.A.No.421 of 2016

Date: 04.03.2024

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