

HIGH COURT OF ANDHRA PRADESH

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M.A.C.M.A No. 1376 of 2017

Between:

The Vice Chairman and Managing Director,
APSRTC Bhavan, Musheerabad,
Hyderabad and 2 others

.....APPELLANTS

AND

Jagabathuni Sree Vani and others

.....RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: **04.10.2024**

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SRI JUSTICE NYAPATHY VIJAY**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

RAVI NATH TILHARI, J

NYAPATHY VIJAY, J

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! Counsel for the Appellants : Sri Vinod Kumar
Standing Counsel for APSRTC

Counsel for the Respondents No.1 to 4: Sri K. Yaswanth

< Gist :

> Head Note:

? Cases Referred:

- 1) (2009) 6 SCC 121
- 2) (2017) 16 SCC 680
- 3) (2018) 18 SCC 130
- 4) (2022) SCC OnLine SC 1683
- 5) (2021) 11 SCC 780
- 6) 2024 SCC OnLine SC 1901
- 7) (2015) 1 SCC 539
- 8) (2021) 6 SCC 188
- 9) (2021) 2 SCC 166

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BL SRI JUSTICE NYAPATHY VIJAY**

M.A.C.M.A. No. 1376 of 2017

JUDGMENT: (per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri Vinod Kumar Tarlada, learned standing counsel for the appellants-Andhra Pradesh State Road Transport Corporation (in short 'APSRTC') and Sri K. Yaswanth, learned counsel for respondents No.1 to 4.

2. This appeal under Section 173 of the Motor Vehicles Act (in short 'the Act') is by APSRTC challenging the judgment and award dated 28.08.2015, passed by the Motor Accidents Claims Tribunal-cum-XIII Additional District at Gajuwaka (in short 'Tribunal') in M.V.O.P.No.1115 of 2011.

3. The 1st respondent is the widow, 2nd and 3rd respondents are the minor daughters, who during the pendency of the claim petition, attained majority, the 4th respondent is the father of the deceased, the 5th respondent in claim petition was the mother of the deceased and died pending MVOP No.1115 of 2011 intestate and 6th respondent was added being legal representative of the 5th respondent.

4. Respondents No.1 to 6, the legal representatives of the deceased-Jagabathuni Kota Venkata Sivudu (in short 'deceased'), filed M.V.O.P.No.1115 of 2011 under Section 166 of the Act, claiming compensation of Rs.1,00,00,000/- for the death of the deceased in a motor accident, dated 24.04.2011 at about 3.20 p.m. while proceeding on motorcycle bearing No.AP33-A6117 to attend his shift duty at Steel Plant Visakhapatnam, when

the APSRTC bus bearing registration No.AP-11Z-6163, driven by its driver, the 7th respondent herein, in a rash and negligent manner and at high speed dashed against the motorcycle of the deceased coming from opposite direction, dragged him to a distance of 20 feet, in which Jagabathuni Kota Venkata Sivudu died, due to the injuries sustained. The deceased was working as foreman with Employee ID No.108845 in E.M.D.Gas Safety Department in Visakha Steel Plant, Visakhapatnam and drawing salary of Rs.37,854.90 ps per month. He was aged about 46 years.

5. The 2nd respondent -APSRTC, filed written statement denying the material averments of the claim petition. It was stated that the driver of the bus was driving the bus slowly and cautiously on the left side of the road. The deceased came in rash and negligent manner and dashed the right side of the bus. It was pleaded that the accident occurred only due to rash and negligent driving on the part of the deceased and there was no rash and negligence on the part of the driver. The compensation claimed was said to be excessive and the claimants were asked to be put to strict proof.

6. On the basis of the pleadings, the Tribunal framed the following issues:

1. Whether the deceased Jagabathuni Kota Venkata Sivudu, S/o.Jagabathuni Lakshmi Narayana, died in the accident that occurred due to rash and negligent driving of APSRTC driver of the bus bearing No.AP-11Z-6163?
2. Whether the petitioners are entitled to compensation? If so, to what amount and from whom?

3. To what relief?

7. On behalf of the claimants, PWs 1, 3 and 4, viz., PW1-J. Sreevani, PW3-P. Nageswara Rao and PW.4 – A. Chalpathi Kumar were examined. The evidence of PW 2-D. Narasinga Rao was eschewed and Exs.A1 to A12 viz., Ex.A1-Certified copy of First Information Report, Ex.A2-Certified copy of Complaint given by first petitioner, Ex.A3-Certified copy of Postmortem Report, Ex.A4-Certified copy of driving licence, Ex.A5-Certified copy of RCB Register, Ex.A6-Certified copy of Motor Vehicles Inquest Report, Ex.A7-Certified copy of charge sheet, Ex.A8-Office copy of legal notice, Ex.A9-Acknowledgment Due, Ex.A10-Certified copy of ration card, Ex.A11-Original last pay slip of the deceased for the month of April 2015 and Ex.A12-Identity card of deceased/Jagabathuni Kota Venkata Sivudu were marked.

8. On behalf of APSRTC, the driver of the bus-I. Naga Raju was examined as RW 1. No documents were marked.

9. The Tribunal, on consideration of the evidence on record, returned a finding that the accident had taken place due to rash and negligent driving of the driver of the APSRTC bus, in which Jagabathuni Kota Venkata Sivudu died due to the injuries, sustained by him. The issue No.1 was thus settled in favour of the claimants that the accident occurred only due to rash and negligent driving of the APSRTC bus.

10. On the point of compensation, issue No.2, the Tribunal recorded that the deceased was an employee of the Visakhapatnam Steel Plant and permanent employee. The Tribunal considered Ex.A11- pay slip, from which, it

recorded that the deceased was earning salary of Rs.37,854-90 ps. One-fourth (1/4th) was deducted towards personal expenses of the deceased. The Tribunal considered that there were six claimants. It awarded 30% towards future prospects recording that he was having permanent job and was aged about 46 years. At the age of 46 years, the Tribunal applied the multiplier of '13' and awarded an amount of Rs.57,57,648/- towards loss of dependency. It added Rs.1,00,000/- towards loss of consortium to the widow claimant and Rs.25,000/- each to respondents No.2 & 3 for loss of love and affection, and further awarded Rs.25,000/- each, to the father of the deceased, 4th claimant and 6th claimant, for loss of love and affection, and awarded Rs.5,000/- towards transport charges. Thus, the Tribunal held that the claimants were entitled to Rs.59,62,648/-. The appellants-APSRTC was held liable to deposit the awarded amount. The Tribunal also granted interest @6% per annum from the date of claim petition till the date of deposit with costs. Towards counsel's fee, the Tribunal awarded Rs.1,000/-

11. Challenging the Award dated 28.08.2015, the APSRTC has filed the appeal.

12. Learned counsel for the appellants submitted that the Tribunal illegally awarded the amount under the conventional heads. He submitted that the 1st respondent being the widow of the deceased, towards loss of consortium. She was not entitled for Rs.1,00,000/- as awarded by the Tribunal. He submitted that award of Rs.25,000/- to the 6th respondent, the sister of the deceased ought not to have been awarded. He submitted that the 6th

respondent (6th petitioner in the claim petition) was substituted as legal representative of the 5th respondent (5th petitioner in the claim petition), the mother of the deceased. He submitted that an amount Rs.5,000/- has been awarded towards transport charges which was very high. No other point was argued.

13. Learned counsel for the claimants/respondents 1 to 6 submitted that the Tribunal deducted 1/4th towards the personal expenses of the deceased. He submitted that the claimants being 5 in number, the deduction should have been 1/5th. He further submitted that the amount under conventional heads is not as per the settled law. There is no dispute raised with respect to the age, future prospects and multiplier as determined by the Tribunal. He further submitted that the interest @6% is on the lower side.

14. We have considered the aforesaid submissions and perused the material on record.

15. The following points arise for our consideration:

A. Whether the compensation amount as awarded by the Tribunal is just and fair compensation, or it deserves to be modified?

B. Whether the interest awarded by the Tribunal is correct?

Point-A:

16. When the claim petition was filed, there were 5 claimants including the mother of the deceased (5th claim petitioner), who died during pendency of the claim petition and was substituted by the 6th respondent. The Tribunal has not considered the deceased 5th claimant while determining the point of deduction

towards personal expenses of the deceased. As on the date of the death and as also filing of the claim petition there were 5 claimants. In ***Sarla Verma Vs Delhi Transport Corporation and Another***,¹ the Hon'ble Apex Court took the view that it was necessary to standardize the deductions to be made under the head personal and living expenses of the deceased. The Hon'ble Apex Court observed as follows:

“30. ...Having a considered several subsequent decisions of this Court, we are of the view that where he deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.”

17. A Constitution Bench of the Hon'ble Supreme Court in ***National Insurance Co. Ltd. v. Pranay Sethi & Ors.***,² held that the standards fixed in ***Sarla Verma (supra)*** would provide guidance for appropriate deduction towards personal and living expenses.

18. In the instant case, there were 5 claimants (including mother, but not counting the sister of deceased). Therefore the deduction under personal expenses of the deceased has to be taken as 1/4th. On this point, there is no illegality in the award of the Tribunal.

19. The submission of the learned counsel for the appellants that 6th claim petitioner, the sister of the deceased, would not be entitled for any amount, cannot be sustained. The reason is that the 6th claim petitioner was

¹ (2009) 6 Supreme Court Cases 121

² (2017) 16 SCC 680

originally not the claimant, but was substituted in the place of the 5th claim petitioner. We are of the view that the reasoning of the Tribunal for not counting the 5th petitioner, for all the purpose of computation of compensation, is not justified. The 6th petitioner may or may not be entitled for any amount of compensation in her own right, but the 5th claim petitioner could not be excluded from consideration while considering the point of deduction towards personal expenses nor for computation under the conventional heads. She (5th claim petitioner) being the mother of the deceased was entitled for being considered as the dependant of the deceased for determination of compensation.

20. On the point of the conventional heads, as per the judgments in ***Pranay Sethi*** (supra), ***Magma National Insurance Company Limited vs Nanu Ram @ Chuhru Ram and Ors.***³, ***Smt. Anjali and Others V. Lokendra Rathod and Others***,⁴ ***United India Insurance Co. Ltd. vs. Satinder Kaur @ Satwinder Kaur and Ors.***⁵ and ***Rojalini Nayak and Others vs Ajit Sahoo and Others***⁶ we award the enhanced amounts under the Conventional Heads of loss of estate, loss of consortium and funeral expenses, as Rs. 18,150/-, Rs. 48,400/- (per claimant) and Rs. 18,150/- respectively as was awarded in ***Rojalini (Supra)*** i.e., with 10% enhancement every 3 years.

³ (2018) 18 SCC 130

⁴ (2022) SCC OnLine SC 1683

⁵ (2021) 11 SCC 780

⁶ 2024 SCC OnLine SC 1901.

21. The Tribunal determined the monthly income as Rs.49,211/- per month. There is no challenge. So, the same is maintained.

Point 'B'- Interest:

22. The Tribunal has awarded interest @ 6% per annum. In ***Kumari Kiran v. Sajjan Singh***⁷, the Hon'ble Apex Court set aside the judgment of the Tribunal therein awarding interest @6% as also the judgment of the High Court awarding interest @7.5% and awarded interest @9% p.a. from the date of the claim petition. In ***Rahul Sharma v. National Insurance Company Limited***⁸ and ***Kirthi v. Oriental Insurance Company Limited***⁹ the Hon'ble Apex Court allowed interest @9% p.a..

23. Thus, the claimants are entitled for just and fair compensation in total as under:

S. No.	Head	Compensation Awarded
1.	Net Annual Income (As per the Tribunal)	Rs. 49,211/- x 12 = Rs. 5,90,532/-
2.	Future Prospects	Rs. 1,77,159/- (i.e., 30% of the income) Total (i.e., 1+2) = Rs. 7,67,691/-
3.	Deduction towards personal expenditure (i.e. 1/4 th)	Rs. 1,91,922/-
4.	Total Annual loss	Rs. 5,75,768/-

⁷ (2015) 1 SCC 539

⁸ (2021) 6 SCC 188

⁹ (2021) 2 SCC 166

5.	Multiplier of 13 at the age of 46 years i.e.	13 x 6,20,058/- = Rs. 74,84,993/-
6.	Conventional Heads:	
	i) Loss of Consortium	Rs. 2,42,000/- (Rs. 48,400/- x 5)
	ii) Loss of Estate	Rs. 18,150/-
	iii) Funeral expenses	Rs. 18,150/-
7.	Total Compensation (Rupees seventy seven lakh sixty three thousand two hundred ninety three only)	Rs. 77,63,293/-

24. Thus, considered, the compensation as awarded by the Tribunal is enhanced from Rs.59,62,648/- to Rs.77,63,293/- together with interest @ 9% per annum from the date of claim petition till deposit / realization.

25. The APSRTC shall make the payment by depositing the amount in total as per this judgment, after adjusting the amount if any already deposited / paid, before the Tribunal, within 4 (four) weeks from today.

26. The respondents/claimants shall be allowed to withdraw the compensation amount with interest in the proportion, in terms of the award of the Tribunal.

27. The Appeal is dismissed with costs throughout to the claimants/respondents, however, awarding just and fair compensation to the claimants as in paras – 23 & 24 (supra) of this judgment.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI, J

NYAPATHY VIJAY, J

Date: 04.10.2024
Dsr

Note:
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