

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

+ MA.CMA.NO.2787 OF 2014

% 25.08.2022

MOHD SALEEM & THREE OTHERS.

.. APPELLANTS / CLAIMANTS

And

\$ K.PADMAVATHI & TWO OTHERS

.. RESPONDENTS

! Counsel for the petitioner : Sri M.V.Hanumantha Rao

Counsel for respondents : R-1 – None appeared.
R-2 - P.N.A. Christian
R-3 - B.Mayur Reddy

< Gist :

> Head Note :

? Citations:

1. II(2004) ACC 249

DATE OF JUDGMENT PRONOUNCED : 25—08—2022

SUBMITTED FOR APPROVAL:

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

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

THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI**MA.CMA.NO.2787 OF 2014****JUDGMENT**

Assailing the order and decree dated 30.07.2012 passed by the Motor Vehicle Accidents Claims Tribunal – cum – II Additional District Judge – FTCD, Khammam, (Tribunal), in M.A.T.O.P.No.1982 of 2009, the claimants filed the present appeal seeking enhancement of compensation.

2. The case of the claimant is that on 5.11.2003 at about 02.30 hours(night), while he was returning to house from Railway Station on his motor cycle, in the meantime, the driver of the APSRTC Bus bearing No. AP 5V 3575 drove the bus in a rash and negligent manner with high speed, coming from Mayuri Centre over bridge side, and dashed against his motor cycle. As a result, he fell down on the road, and sustained grievous head injuries. On a report, the P.S. Traffic Khammam, registered a case in Cr.No.156 of 2008 under Section 338 IPC.

3. That immediately after the accident, he was shifted to Government hospital, Khamma, and later he was admitted in S.C. Company Limited, R.C., Kothagudem, and he spent an amount of Rs.2,50,000/- towards medical and other expenses.

4. His further case is that he is a business man, and used to earn an amount of Rs.10,000/- per month and due to head injury, he is unable to move from bed, and he is suffering from severe pain, and he is also unable to attend to his normal duties, and thereby lost his earnings. Respondents 1 to 3, being owner, insurer and hirer of the bus involved in the accident, are jointly and severally liable to pay the compensation.

5. With these averments, he filed claim petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.8,00,000/-.

6. The 1st respondent, who is the owner of the bus, remained ex parte. The 2nd respondent, who is the insurer, filed counter affidavit, and denying the manner of accident as pleaded by the claimant, and also the injuries sustained by him, his avocation and income and, stating the compensation claimed is exorbitant, sought for dismissal of the claim petition.

7. The 3rd respondent – Corporation filed counter affidavit and while denying the averments made in the claim petition, stated that it is only the hirer of the bus, and as the 1st respondent is the owner, and the 2nd respondent is the insurer, they are liable to pay the compensation, and sought to dismiss the claim petition against this respondent.

8. Based on the above pleadings, the Tribunal framed the following issues for trial:

1. Whether the accident took place due to rash and negligent driving of crime vehicle APSRTC Bus AP 5 V 3575 by its driver?
2. Whether the petitioner is entitled to claim any compensation? If so, to what amount and from which of the respondents?
3. To what relief?

9. In support of the case of the claimant, P.Ws.1 to 4 were examined and Exs.A-1 to A-18 were got marked, and on behalf of the respondent, except marking the policy of the crime vehicle as Ex.B-1, no oral evidence was adduced.

10. During the pendency of the claim petition, the claimant, who is the injured died, and vide order dated 16.8.2011 in I.A.No.686 of 2011, his legal representatives were impleaded as claimants 2 to 5.

11. The Tribunal based on the evidence of P.W.1, who is the injured, coupled with Exs.A-1 to A-3, and as no rebuttal evidence was led by the 2nd respondent – insurance company, recorded finding of fact that on 5.11.2008 while the claimant was coming on his motor cycle from Mayuri Centre over bridge, the driver of the bus of the APSRTC bearing No. AP 5V 3575 drove the bus in a rash and negligent manner and caused the accident, and as a result, the claimant sustained injuries.

12. Further, considering the evidence of P.W.1, who is the claimant, and P.W.3, the doctor, who treated him, coupled with medical evidence, awarded following amounts:

1. Hospital bills	-- Rs. 90,000 – 00
2. Medicines	-- Rs. 86,000 – 00
3. Attendant charges	-- Rs. 5,000 – 00
4. Loss of earnings during the course of treatment	-- Rs. 24,000 – 00
5. Extra nourishment	-- Rs. 10,000 – 00

Total:	-- Rs.2,15,000 – 00

13. Thus, the Tribunal granted the above stated amount with interest at the rate of 7.5 per cent per annum from the date of the claim petition till the date of realization, and made the three respondents, who are the owner, insured and the hirer of the crime bus, as jointly and severally liable to pay the compensation. Seeking enhancement of compensation, the present appeal is filed.

14. Learned counsel appearing for the claimants submitted that there is no dispute that the accident occurred due to rash and negligent driving of the driver of the bus of the

Corporation and in the said accident, the claimant sustained injuries. As per the evidence of P.W.3, the claimant sustained three grievous injuries to the head and has taken treatment, and after discharge from hospital, he died. He further submits that evidence of P.W.3 and the medical evidence clearly established that deceased has suffered grievous injuries, and only due to the impact of the said injuries, he died. Therefore, the Tribunal ought to have granted compensation taking into consideration of his income, but the Tribunal did not award any amount towards loss of future earnings, and amount under other conventional heads. He submits that the Tribunal rejected the claim, only on the technical ground that P.W.4, who is the wife of the deceased, did not get mentioned in amended petition that the deceased died due to the impact of the injuries sustained in the accident. He submits that in the above facts and circumstances, rejecting the claim of the claimants, cannot be sustained. He submits that prior to the accident, the deceased, was a business man, and was earning an amount of Rs.10,000/- per month and due to his death, the claimants lost their source of income and therefore, sought to award compensation taking into consideration the income of the deceased.

15. On the other hand learned counsel appearing for the respondents, supporting the impugned order and decree of the Tribunal, sought to dismiss the appeal.

16. In view of the above facts and circumstances, the issue that arises for consideration is whether the impugned order warrants any interference?

17. There is no dispute that the accident occurred due to rash and negligent driving of the driver of the crime bus and that the claimant/ deceased sustained injuries in the said

accident, and the present appeal is confined only with regard to quantum, and also on the issue, whether the deceased died due to the impact of the accident.

18. Initially, the deceased was examined as P.W.1 and he deposed as per the averments made in the claim petition. P.W.3 is the doctor, who was working as Civil Assistant Surgeon, Kinnera Hospital, Khammam. He deposed that on 5.11.2008 P.W.1 was admitted in their hospital due to injuries sustained in RTA, and he examined him, and found head injury with fracture on right temporal bone, (2) head injury with multiple contusions over bilateral, frontal and temporal bones and (3) head injury with bilateral parietal subarchanoid hemorrhage; and that injuries 1 to 3 are grievous in nature. That P.W.1 was discharged on 24.11.2006 in satisfactory condition. In his further evidence, he testified medical evidence, viz., Exs.A-3 to A-9 and A-14.

19. P.W.4 is the wife of the deceased. She deposed that subsequently her husband P.W.1 took treatment with Dr.P.Rama Rao, Neuro Surgeon in ShashiBala Super Specialty Hospital, Khammam vide Exs.A-16 to A-18. That after prolonged treatment her husband died on 16.3.2011 due to injuries sustained in the above said accident. She further deposed with regard to avocation and income of the deceased.

20. There is no dispute that deceased sustained injuries in the accident and after treatment as per the evidence of P.W.3, he was discharged on 24.11.2008 in a satisfactory condition. As per the evidence of P.W.4, who is the wife of the deceased, the deceased died on 16.3.2011 i.e., after a period of about three years.

21. It is to be seen that after the death of the deceased, the claimants filed amendment petition. In the amendment it is nowhere stated that the deceased died due to the impact of injuries sustained in the accident. For the first time P.W.4 deposed before the court that her husband died due to injuries sustained in the accident. To substantiate this version, the claimants have not produced any medical record to show that the deceased died due to impact of the injuries sustained in the accident. Hence, except the bare statement of P.W.4, there is no medical evidence on record.

22. In view of the above circumstances and in the absence of any medical evidence on record, it cannot be said that the deceased died due to the impact of the injuries sustained in the accident in question. Thus the Tribunal has rightly rejected the claim of the claimants in this regard, and no contra evidence is pointed out by the claimants, to interfere with the finding of the Tribunal. Hence, the contention of the learned counsel for the claimants / appellants in this regard is hereby rejected, and it has to be taken that the deceased died a natural death.

23. In the decision reported in ***UNITED INDIA INSURANCE CO., LTD vs. G.KRISHNA RAO¹***, a learned single Judge of the erstwhile High Court of Andhra Pradesh, considering similar circumstances held that where the deceased therein met with natural death, after the accident, held that his legal representatives are only entitled to loss of estate, transport charges, medical expenses, extra nourishment and that they are not entitled to future loss of earnings on account of partial permanent disability and amount under pain and suffering. The relevant excerpts of the order are as under:

¹II(2004)ACC 249

"5. The petition was filed on 14-7-1986, but it was numbered in 1991. During the pendency of the petition the first claimant met with natural death on 1-12-1995 and his legal representatives were brought on record as Claimants 2 to 5.

...

18. The above legal position makes it clear that all items come within the scope of "loss to the estate" and are entitled to be claimed by the legal representatives of the injured. From the above discussion I hold that the legal representatives of the first, claimant are entitled for compensation for loss to the estate, transport charges, medical expenses, extra nourishment. The claimants 2 to 5 (respondents herein) are not entitled for Rs. 36,000/- awarded by the Tribunal towards future loss of earnings on account of partial permanent disability and Rs. 10,000/- towards pain and suffering. The question of contribution to the family members arises only on the basis of the earnings of the injured. When the injured himself is not available, the question of calculating loss of future earnings in the event of natural death does not arise. After deducting Rs. 46,000/- the claimants 2 to 5 are entitled to Rs. 37,000/-. Out of Rs. 37,000/-, the claimants 3 to 5 are entitled each to Rs. 7,500/- and the second claimant is entitled for the rest of the amount.

19. In the result, the appeal is allowed in part. The compensation of Rs. 83,000/- awarded by the Tribunal is reduced to Rs. 37,000/- by deducting Rs. 46,000/- awarded by the Tribunal towards loss of earnings towards partial permanent disability and pain and suffering from the total amount of compensation. The interest and costs are also proportionately liable to be reduced. Each party to bear its own costs in this appeal."

24. Keeping in view the law laid down in the above judgment, I am inclined to grant compensation under the above stated heads.

25. There is no dispute that the deceased sustained three grievous injuries in the accident. But the Tribunal has not awarded any amount for the injuries. Having regard to the facts and circumstances of the case and the grievous nature of injuries, I am inclined to grant an amount of Rs.35,000/- per each injury i.e., an amount of Rs.1,05,000/- to the three grievous injuries.

26. The amount granted by the Tribunal for hospital charges, and medical bills at the rate of Rs.90,000/- and Rs.86,476/- does not warrant any interference. The amount of Rs.10,000/- granted by the Tribunal towards extra nourishment is enhanced to Rs.15,000/-.

27. As per the case of the deceased, he was earning an amount of Rs.10,000/- per month, and as per the evidence of P.W.3, he received three grievous injuries to the head and

after discharge, he took treatment with Dr.P.Rama Rao, Neru Surgeon and the claimants marked Exs.A-16 to A-18. Therefore, I am of the considered view, that at least for a period of six months, he might not have attended to his business activities. Hence, I am inclined to grant an amount of Rs.60,000/- towards loss of earnings. The amount of Rs.24,000/- granted by the Tribunal under this head is accordingly enhanced.

28. Further, the claimants are granted an amount of Rs.25,000/- towards loss of estate; Rs.5,000/- towards transport charges; and Rs.15,000/- towards attendant charges, the amount granted by the Tribunal under this head, is accordingly modified.

29. Thus in all the claimants are granted the following amounts:

1. For the three grievous injuries @ Rs.35,000/- per each injury	-- Rs.1,05,000 – 00
2. Loss of earning during the treatment period	-- Rs. 60,000 - 00
3. Hospital bills	-- Rs. 90,000 – 00
4. Medical bills	-- Rs. 86,476 – 00
5. Loss of estate	-- Rs. 25,000 - 00
6. Extra nourishment	-- Rs. 15,000 – 00
7. Transport charges	-- Rs. 5,000 – 00
8. Attendant charges	-- Rs. 15,000 – 00

Rs.4,01,476 - 00

30. Thus the amount granted by the Tribunal at Rs.2,15,000/- is enhanced to Rs.4,01,476/- with interest at the rate of 7.5 per cent per annum from the date of the claim petition till the date of realization, and the respondents 1 to 3 are jointly and severally liable to pay the compensation to the claimants.

31. The order of the Tribunal with regard to apportionment, withdrawal and deposit, shall stands confirmed.

32. Any amount already deposited by the Insurance Company shall be given credit to.

33. The appeal is accordingly allowed in part to the extent indicated above.

34. Interlocutory Applications pending, if any, shall stand closed. No order as to costs.

M.G.PRIYADARSINI,J

DATE:25—08—2022

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