A MANAM SARASWATHI SAMPOORNA KALAVATHI & ORS.

v.

MANAGER, APSRTC, TADEPALLIGUDEM A.P. & ANR.

(Civil Appeal No. 2325 of 2010)

B MARCH 26, 2010

[DALVEER BHANDARI AND K.S. RADHAKRISHNAN, JJ.]

C *Motor Vehicles Act, 1988 – s.166 and Schedule II – Fatal accident – Rash and negligent driving of offending vehicle alleged –FIR also lodged – PW-2, Pillion rider of the scooter driven by the deceased, deposing that deceased was driving the scooter cautiously and driver of the offending vehicle was* D *driving in a rash and negligent manner – Claim for compensation –Tribunal holding that accident was caused due to rash and negligent driving and awarded Rs. four lakhs applying multiplier of 16 – High Court disbelieving the evidence of PW-2 held that accident was not due to rash and* E *negligent driving –It also held that application of multiplier from Schedule II was not correct, as the Schedule did not exist on the day of accident – However, the Court awarded compensation for Rs. 75,000/- -- On appeal, held: High Court order was contradictory and unsustainable – There is no* F *basis, logic and rationality in arriving at the conclusions – High Court was unjustified in weaving out a new case which is not borne out from the evidence on record – Application of multiplier from Schedule II is permissible in the facts of the case –Award passed by Tribunal restored.*

G **After a fatal motor accident, mother, father and sisters of the deceased filed the claim petition under Motor Vehicles Act, 1988. FIR in respect of the incident was also lodged immediately after the accident. PW-2 (Pillion rider of the scooter which was driven by the deceased) stated**

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that deceased was driving the scooter slowly and cautiously on left side of the road and respondent No. 2 (the bus driver) was driving the bus in a rash and negligent manner and without blowing horn dashed the scooter from behind. Tribunal, relying on the testimony of PW-2, held that the deceased died because of rash and negligent act of respondent No. 2 (the driver of APSRTC). The Tribunal applying the multiplier of 16, determined the compensation amount at Rs. 4,80,000/-. Since the claimants had claimed only Rs. 4,00,000/-, the Tribunal restricted the compensation amount to Rs. 4,00,000/-.

In appeal, High Court disbelieved the testimony of PW-2, doubting his presence at the spot. It observed that there were possibilities of deceased driving the scooter at a high speed and sustaining injuries, or deceased not possessing a driving licence and falling down due to lack of experience; and that there was possibility of the claimants influencing the police and getting the FIR registered with time and date of their choice. High Court further held that the Tribunal was in error in taking the multiplier from Schedule II of the Act, as the Schedule did not exist on the day of accident. The court awarded compensation for Rs. 75,000/-. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1.1.The High Court erroneously observed that there is no evidence that the deceased died because of serious injuries received due to rash and negligent driving of the driver of the APSRTC. [Para 19] [881-D]

1.2. The approach of the High Court in evaluating the evidence of PW-2 is entirely erroneous. The evidence of PW-2 could not have been discarded on the ground that after sustaining minor injuries, he did not file a claim petition. This cannot be an appropriate manner of appreciating the evidence. When no question was asked

A in the cross-examination, then PW-2 could not be expected to give reply to the question. The High Court by adopting erroneous method of scrutinizing the evidence, has discarded the evidence of PW-2. The High Court has wrongly observed that the possibility of PW-2 B not being with the deceased at the time of accident and his implicating the bus belonging to the respondents, is also without any basis or foundation. [Paras 13 and 18] [879-F-H; 880-A; 881-B-C]

C 1.3. The finding of the High Court that it was possible that the deceased, while driving the scooter at a high speed, falling down and sustaining head injury is totally contrary to the record of this case. PW-2 has categorically stated in his evidence that the deceased was driving slowly and cautiously on the left side of the road and the D driver of the bus was driving the bus in a rash and negligent manner without blowing horn. [Para 14] [880-A-B]

1.4. There is no basis, logic and rationality in arriving E at the conclusion that there was possibility of the deceased not possessing a driving licence, and his falling down due to lack of experience and sustaining the head injury. [Para 15] [880-C-D]

F 1.5. The High Court was unjustified in weaving out a new case which is not borne out from the evidence on record. Similarly, the High Court erroneously observed that there was possibility of appellants-claimants influencing the police and getting an FIR registered with time and date of their choice. The appeal by special leave G filed by the appellants is delayed by 654 days and this delay, according to the affidavit filed by the appellants, occurred due to extreme poverty. In this background, the above observation of the High Court is wholly erroneous and without any basis. [Paras 16 and 17] [880-D-E; 881-H A]

1.6. The High Court, on the one hand, came to the clear conclusion that the deceased did not die because of the rash and negligent act of the respondents and on the other hand, it awarded compensation of Rs.75,000/-. If the High Court was clearly of the view that the deceased did not die because of the serious injuries sustained on account of rash and negligent act of the driver, then no compensation ought to have been awarded. The findings of the High Court are totally contradictory and unsustainable. [Para 22] [882-C-D]

2. The High Court's observation that the Tribunal was in error in taking the multiplier from Schedule II of the Act because on the date of the accident, Schedule II of the Act was not there in the Act and it was incorporated only by virtue of Act 54 of 1994 with effect from 14.11.1994, is not correct. [Para 19] [881-D-E]

Lata Wadhwa and Ors. vs. State of Bihar and Ors. **(2001) 8 SCC 197, relied on.**

3. The amount of compensation which has already been given to the appellants would be adjusted and the remaining amount, with interest as directed by the Tribunal, would be handed over to the appellants within two months from the date of this judgment. In case, the amount is not paid within a period of two months, the amount shall carry interest at the rate of 15% per annum. [Para 24] [882-F-G]

Case Law Reference:

(2001) 8 SCC 197 Relied on. Para 20

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2325 of 2010.

From the Judgment & Order dated 4.12.2006 of the High Court Judicature Andhra Pradesh at Hyderabad in Civil Misc. Appeal No. 2365 of 1997.

A Shally Bhasin Maheshwari for the Appellants.

G.N. Reddy for the Respondents.

The Judgment of the Court was delivered by

B **DALVEER BHANDARI, J.** 1. Delay condoned. Leave granted.

2. The brief facts which are necessary for disposal of this appeal are recapitulated as under:

C The deceased was an engineering graduate working as a Branch Manager in Fancy Traders Company at Bangalore. He had gone to Velpucharla from Bangalore on the eve of Sankranti festival. On 11.1.1993 at about 11.00 a.m., the deceased, namely, Manam Yasovardhana, along with one D Tummala Nageswara Rao had gone to Gannavaram Village on the scooter bearing No. AP-16-D-699. In the evening, they were returning to Velpucharla and when they reached the District Electrical Stores, Vatluru, N.H.5 road at about 6.30 p.m. while the deceased was driving the scooter on the left side of the road E slowly and cautiously, the driver of the APSRTC bus bearing No. AP-Z-1247 drove in a rash and negligent manner without blowing horn and while proceeding towards Eluru hit the scooter from behind, as a result of which the deceased who was driving the scooter died on the spot and the pillion rider F Tummala Nageswara Rao fell down and sustained injuries. The accident took place because of rash and negligent driving of the driver – Respondent No.2, P. Chittirama Raju of the APRRTC bus bearing No.AP-Z-1247.

3. The mother, father and sisters of the deceased filed a G joint claim petition, being Original Petition No.451/1993 under Section 166 of the Motor Vehicles Act, 1988 before the Motor Accidents Claims Tribunal, West Godavari District, Erulu, A.P. The Tribunal, after taking into consideration the pleadings of the parties, framed the following issues:

H (i) Whether the accident occurred due to rash and negligent

driving of the bus driver - 1st Respondent (respondent no.2 herein) and dashed against the scooter bearing No. AP-16-D-699 being driven by the deceased.

(ii) Whether the petitioners (appellants herein) are entitled to claim any compensation? If so, to what amount and against which of the respondents?

4. While dealing with Issue No.(i), the Tribunal stated that it is the specific evidence of PW-2, pillion rider of the scooter driven by the deceased Yasovardhana that on 11.1.1993 while returning to Eluru when they reached the District Electrical Stores, Vatluru, at about 6.30 p.m., the APSRTC bus bearing No. AP-Z-1247 which was being driven by P. Chittirama Raju, respondent No.2 herein, dashed the scooter from behind and the deceased and the scooter fell down, resulting into the death of the deceased on the spot.

5. It may be pertinent to mention herein that PW-2 clearly stated that the deceased was driving the scooter slowly and cautiously on the left side of the road and the bus driver was driving the bus in a rash and negligent manner without blowing horn and while proceeding towards Eluru, dashed the scooter from behind.

6. The incident took place on 11.1.1993 at 6.30 p.m. and the first information report was lodged at 8.00 p.m. on the same day. The post-mortem certificate revealed that the deceased died because of the multiple injuries and the injury on the vital part of the brain led to multiple fracture of vault and base of skull and due to haemorrhage and shock.

7. The Tribunal accepted the testimony of PW-2 – pillion rider and clearly found that the deceased died because of the rash and negligent act of the driver of the APSRTC bus.

8. Regarding issue No. (ii) which is about the claim of compensation, the appellants had claimed a compensation of Rs. 4 lakhs on the ground that the age of the deceased was

A 24 years on the date of accident and was getting Rs.5,000 per month. The Tribunal, relying on the certificate issued by the Chartered Accountant, Pondicherry, stated that the deceased got Rs.60,000/- towards salary and commission during the financial year 1991-92 and Rs.50,000/- from 1.4.1992 to
B 31.1.1993. The accident took place on 11.1.1993. This certificate shows that the total salary and commission for the ten months i.e. from 1.4.1992 to 31.1.1993 was Rs.50,000/-. Therefore, the gross earnings of the deceased was around Rs.5,000/- per month from salary and commission. Out of this
C sum, if 1/3rd is deducted then the net contribution will be Rs.3,334/- per month which would work out to be Rs.40,008/- per annum. The Tribunal took a round figure of Rs.40,000/- and applied the multiplier of 16. According to the Tribunal, the total amount would work out to Rs.6,40,000/-. Since the amount was
D to be paid in lump sum, a further deduction of 25% was made and after deduction the remaining payable amount was Rs.4,80,000/-. Since the appellants had claimed only Rs. 4 lakhs, the Tribunal restricted the total compensation at Rs. 4 lakhs.

E 9. The Tribunal also took into consideration the age of the mother of the deceased, which was 47 years at that time and applying the multiplier of 13, the amount of compensation worked out to be Rs.3,90,000/- which is short by Rs.10,000/- of the total amount claimed. Even assuming that the multiplier
F of 16 was wrongly applied by the Tribunal, the Tribunal also calculated the amount of compensation by taking into consideration the age of the mother of the deceased, which was 47 years at that time, and applying the multiplier of 13, which worked out to be almost the same amount. Therefore, the
G Tribunal awarded the compensation of Rs.4 lakhs towards loss of future earnings or loss of dependency plus Rs.2,000/- towards the funeral expenses in this case. The Tribunal further directed that the appellants would be entitled to interest at the rate of 12% per annum on the amount of compensation from
H the date of application till the date of realization.

10. The Manager of the APSRTC – the 1st respondent herein, preferred an appeal before the High Court of Judicature, Andhra Pradesh at Hyderabad, under Section 173 of the Motor Vehicles Act, 1988, against the judgment of the Tribunal. The High Court relied on the first information report and, in paragraph 8 of the impugned order, mentioned that the first information report was lodged at 8.00 p.m. on 11.1.1993 and that the deceased died due to the rash and negligent driving of the APSRTC bus.

11. The High Court strangely observed that the motor vehicle inspector inspected the bus of the APSRTC at Taluq Police Station on 12.1.1993 at about 3.30 p.m. and did not find any damage or blood stains on the tyres of the bus and that the efficiency of foot brake of the bus was good and its action was even.

12. The High Court while evaluating the evidence of PW-2 has observed that when according to PW-2, he was thrown away into the bushes then how could he see the number of the bus? This is not explained by PW-2. It is further mentioned that it is not even the case of PW-2 that he had filed any claim petition seeking compensation for the injuries received by him in the accident. So the evidence of PW-2 that he could note the number of the bus that sped away, is difficult to be believed or accepted. The High Court further observed that if the bus was being driven at a high speed and on dashing against the scooter from behind, there should be a dent at least on the front or side portion of the body of the bus, but there was no damage to the bus.

13. The approach of the High Court in evaluating the evidence of PW-2 is entirely erroneous. How could the evidence of PW-2 be discarded on the ground that after sustaining minor injuries he did not file a claim petition? This cannot be an appropriate manner of appreciating the evidence. When no question was asked in the cross-examination, then how PW-2 could be expected to give reply to the question? The High Court

A by adopting erroneous method of scrutinizing the evidence has discarded the evidence of PW-2.

14. The High Court further observed in the impugned judgment that the possibility of the deceased, while driving the scooter at a high speed, falling down and sustaining head B injury cannot be ruled out. This finding is totally contrary to the record of this case. PW-2 has categorically stated in his evidence that the deceased was driving slowly and cautiously on the left side of the road and the driver of the bus was driving the bus in a rash and negligent manner without blowing horn.

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15. The High Court further observed that significantly the driving license of the deceased was not produced. So the possibility of the deceased not possessing a driving licence, and his falling down due to lack of experience and sustaining D the head injury cannot be ruled out. There is no basis, logic and rationality in arriving at this conclusion.

16. The High Court was totally unjustified in weaving out a new case which is not borne out from the evidence on record. Similarly, the High Court erroneously observed that the E possibility of respondent Nos.1 to 5 (appellants herein) influencing the police and getting an FIR registered with time and date of their choice cannot be ruled out and the possibility of PW-2 not being with the deceased at the time of accident and his implicating a bus belonging to the appellant F (respondent no.1 herein) as having caused the accident also cannot be ruled out, because if really PW-2 was thrown away into the bushes due to the impact, as stated by him, he would have sustained at least some scratches and would have been referred to government hospital. The entire analysis of evidence G by the High Court is erroneous and faulty. There was no basis for the High Court to come to the conclusion that the possibility of the respondents (appellants herein), influencing the police and getting the FIR registered with time and date of their choice cannot be ruled out.

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17. This appeal by special leave filed by the appellants is delayed by 654 days and this delay, according to the affidavit filed by the appellants, occurred due to extreme poverty. The appellants could not collect necessary funds to file the special leave petition before this Court. In the background of the facts of this case, the observation of the High Court that the possibility of the appellants influencing the police and getting an FIR registered with time and date of their choice cannot be ruled out, is wholly erroneous and without any basis. A B

18. The High Court has wrongly observed that the possibility of PW-2 not being with the deceased at the time of accident and his implicating the bus belonging to the respondents herein cannot be ruled out, is also without any basis or foundation whatsoever. C

19. The High Court erroneously observed that there is no evidence that the deceased died because of serious injuries received due to rash and negligent driving of the driver of the APSRTC. The High Court further observed that the Tribunal was in error in taking the multiplier from the Schedule II of the Act because on the date of the accident, Schedule II of the Act was not there in the Act and it was incorporated only by virtue of Act 54 of 1994 with effect from 14.11.1994. D E

20. Ms. Shally Bhasin Maheshwari, learned counsel for the appellants has drawn our attention to the judgment of this Court in *Lata Wadhwa and Ors. vs. State of Bihar and Ors.*, (2001) 8 SCC 197. This case pertains to an accident which had taken place on 3.3.1989 in Jamshedpur. She has particularly drawn our attention to paragraph 4 of the said judgment, the relevant portion of which reads as under: F

> ".....It has been held that the multiplier method having been consistently applied by the Supreme Court to decide the question of compensation in the cases arising out of the Motor Vehicles Act, the said multiplier method has been adopted in the present case." G H

A 21. She has further drawn our attention to paragraph 8 of the judgment, the relevant portion of which reads as under:

> "The multiplier method is logically sound and legally well-established method of ensuring a 'just' compensation which will make for uniformity and certainty of the awards. A departure from this method can only be justified in rare and extraordinary circumstances and very exceptional cases."

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22. The aforesaid judgment was available when the C judgment of the High Court was delivered. The High Court, on the one hand, came to the clear conclusion that the deceased did not die because of the rash and negligent act of the respondents and on the other hand, it awarded compensation of Rs.75,000/-. If the High Court was clearly of the view that the D deceased did not die because of the serious injuries sustained on account of rash and negligent act of the driver, then no compensation ought to have been awarded. The findings of the High Court are totally contradictory and unsustainable.

23. In the facts and circumstances of this case, we are left E with no choice but to set aside the impugned judgment of the High Court and we do so. Consequently, the judgment passed by the Motor Accident Claims Tribunal, West Godawari District, is restored.

F 24. The amount of compensation which has already been given to the appellants would be adjusted and the remaining amount, with interest as directed by the Tribunal, would be handed over to the appellants within two months from today. In case, the amount is not paid within a period of two months, the amount shall carry interest at the rate of 15% per annum.

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25. This appeal is accordingly allowed and disposed of leaving the parties to bear their own costs.

K.K.T. Appeal allowed.

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