

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.M.A.No.1444 of 2004

JUDGMENT :

The appellant is the A.P.S.R.T.C/2nd respondent of the claim petition of the bus bearing No.AP 10 Z 554 among the 5th respondents including its driver, driver, owner and insurer of the van bearing No.AEP 4466 in which the deceased was traveling along with others and from collision of the two vehicles, the accident took place on 06.08.1998 and the appeal is maintained impugning the award of the Tribunal in the claim made by the wife, mother and two minor children of the deceased Biragi, aged about 25 years as per the evidence though as per Exs.P2, 21 years to say between 21 to 25 years, wherein the Tribunal held that on the claim of earnings by the deceased for no proof, taken at Rs.1,500/- per month, and for the accident was the result of negligence of driver of the bus in awarding compensation of Rs.2,00,000/- with interest at 9% p.a. The contentions in the grounds of appeal impugning the same are that the Tribunal gravely erred in not fixing the joint liability for the contribution by the van driver and also besides the deceased was traveling in the van as unauthorized passenger and the compensation awarded is otherwise excessive and the main negligence was on the part of the van driver only and R.T.C also examined its driver the 1st respondent who also deposed the same for nothing to ignore the evidence of R.W-1, hence to allow the appeal if not reduced the compensation fixing the joint liability.

2. The contention of the learned counsel for the claimants as respondent Nos.1 to 4 of the appeal is but for no cross-objections the compensation is utterly low to enhance and for this Court while sitting in appeal there is nothing to interfere. The contention of the learned counsel for the 8th respondent-insurer (claim petition 5th respondent) for driver and owner of the van remained exparte, is that the Tribunal came to the right conclusion from the material on record in finding bus driver at fault and while sitting in appeal, there is nothing to interfere.

3. Heard. Perused the material on record. The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in the appeal.

4. Now the points that arise for consideration in the appeal are:

- i. *Whether there is any composite negligence of both drivers or no negligence of the bus driver and whether the compensation awarded is otherwise excessive and if so with what observations?*
- ii. *To what result?*

POINT-i:

5. In impugning the quantum of compensation including on the grounds of contributory negligence by the appellant-R.T.C concerned, a perusal of the M.V.I Report Ex.A-3 clearly speaks that the van was extensively damaged and bus left front portion was also damaged. Ex.A-4 charge sheet filed by the police, after investigation, is against the driver of the bus from the crime registered against the driver of the bus under Ex.A-1. P.W-2 is the so called eye witness to the accident. The deceased so far as the claim against the van-insurer concerned is an unauthorized passenger in the goods vehicle but so far as the claim against R.T.C concerned is the third party. However, even there is evidence of R.W-1 driver of the bus from the manner of accident and damage extensively to the van, the main perpetrator for the accident is the driver of the bus though there is composite negligence of both drivers i.e., of the bus as well as van. As composite or contributory negligence depends upon several factors including size of the vehicle, width of the road and manner of accident on the road, but for the material supra, there is no scene observation report, from the M.V.I. report clearly speaks head on collision, van extensively damaged and the van when compared with the bus smaller in size and composite negligence establishes the same by both the vehicles, it is just to fix 10% contribution, outcome of composite negligence of the driver of the van on which the deceased was traveling as unauthorized for the claim though for cooking, the owner and driver of the van alone are liable for the same, but not the insurer. However, coming to the liability of R.T.C concerned for 90% liability it comes to Rs.1,80,000/- but for no cross-objections from the claimants to enhance from the compensation though utterly low, to apportion accordingly with nothing to interfere regarding the rate of interest in exercise of discretion from the compensation is utterly low. Accordingly, point No.i is answered.

POINT No.ii:

7. In the result, the appeal is partly allowed by fixing Rs.1,80,000/- as 90% liability of the 2nd respondent-A.P.S.R.T.C to the claim petition and the remaining 10% liability

of Rs.20,000/- is on the driver and owner of the van in which the deceased was traveling to recover accordingly by execution and with proportionate costs, including costs of the appeal.

8. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 10-04-2015

ksh