

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A.C.M.A. No.2630 OF 2005

JUDGMENT:

Aggrieved by the order, dated 19-10-2004, in O.P. No.1996 of 2002, passed by the learned Chairman, Motor Accidents Claims Tribunal – cum – XI Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad, dismissing the claim made by the petitioners seeking compensation of Rs.2,00,000/- (Rupees two lakhs) under Section 166 of the Motor Vehicles Act, 1988, (for short 'the Act'), and rules 455 and 475(1)(b) of the Andhra Pradesh Motor Vehicles Rules, 1989 read with section 140 of the Act, for the death of one Sabber Khan, husband of petitioner No.1 and father of petitioner Nos.2 and 3, the instant appeal is preferred by the petitioners seeking to set aside the said order and to award the said compensation.

2. The appellants herein are the petitioners in the O.P. before the Tribunal, while respondent Nos.1 and 2 – Andhra Pradesh State Road Transport Corporation, represented by its Vice-Chairman and Managing Director and Depot Manager, respectively, are also arrayed as respondent Nos.1 and 2, respectively.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the Tribunal.

4. The facts, in brief, are that on 17-07-2002, the deceased - Sabber Khan, who was aged 53 years, cook by profession and earning Rs.4,000/- per month, was proceeding on foot at Chaderghat lower bridge to return to his house, at about

1.45 p.m., at which time, an RTC bus bearing registration No.AP 10Z 1459 belonging to respondent Nos.1 and 2 driven by its driver in a rash and negligent manner, hit him from behind, resulting head injury to the deceased, and he was shifted to Osmania General Hospital, Hyderabad for treatment, where he succumbed to injuries at 5.40 p.m.

i) One Mr. Shamsheer Khan, brother of the deceased, lodged a report, basing on which, the Station House Officer, Kachiguda Police Station, Hyderabad, registered a case in Crime No.196 of 2002 for the offence punishable under Section 304 IPC against the driver of RTC bus and investigated into.

5. A Common counter was filed by respondent Nos.1 and 2, resisting the claim. It is stated that the RTC bus driven by its driver was proceeding on its way to Hayathnagar, and when it reached near Chaderghat lower bridge, the driver having heard a noise from behind, stopped the bus and observed, a scooter fell on the back side of the bus and adjacent thereto, a person was lying on the road. Even the driver got down from the bus and went near to the person then the scooterist started and ran away leaving no time to note its number. It is, thus, pleaded that the RTC bus was not involved in the accident, as such, they are not liable to compensate the petitioners, and sought to dismiss the claim petition.

6. The Tribunal has framed the following three issues in the direction of fixing responsibility for the accident.

“ 1. Whether the accident took place on 17-7-2002 at 13.45 hours, due to rash and negligent driving of the APSRTC bus bearing No.AP 10 Z 1459, by its driver?

2. Whether the petitioners are entitled to claim compensation

from the respondents? If so, to what amount and from whom?

3. To what relief? ”

7. During inquiry before the Tribunal, on behalf of the petitioners, petitioner No.1 examined herself as PW.1, besides examining one Mohd. Haneef Khan as PW.2, and marked Exs.A-1 to A-7, whereas, on behalf of the respondents, their driver, Sri K. Vijay Kumar, was examined as RW.1 and no documents were marked.

8. The Tribunal on issue No.1 elaborately dealt with the evidence of PW.2, an eye-witness to the occurrence, and placing reliance on the evidence of RW.1, driver of the RTC bus, observing that the petitioners failed to let in legally acceptable evidence proving their entitlement for compensation, dismissed the claim petition.

9. Aggrieved by the aforesaid order and decree, the instant appeal is preferred by the petitioners contending in the grounds that the Tribunal has not properly appreciated the evidence on record and merely basing on surmises, rejected their claim. It is stated that the contents of charge sheet and first information report alone are sufficient enough to prove that the RTC bus was involved in the accident resulting in the death of the deceased Sabber Khan, and the Tribunal without assigning any reasons, sidelined Ex.A-1 and other documentary evidence, such as, inquest report. It is also stated that the Tribunal ought not to have believed the evidence of RW.1, who has introduced a fabricated version at the stage of filing counter and continued the same and sought to allow the appeal by setting aside the order and decree

under challenge.

10. Heard Sri A. Sameer Kumar, learned counsel for the appellants. The instant appeal is dismissed against respondent No.2, by order, dated 05-01-2012. Respondent No.2 being Depot Manager of Hayathnagar Depot and respondent No.1 being Vice-Chairman and Managing Director, who has contested the instant appeal, the dismissal of instant appeal against respondent No.2 is of no consequence.

11. The learned counsel for the appellants would submit that the Tribunal went wrong in believing the evidence of RW.1 and discarding the documentary evidence let in by the petitioners and the evidence of PW.2. It is also his submission that the documentary evidence let in by the petitioners would give rise to an inescapable inference that the driver of the bus drove the bus in a rash and negligent manner and dashed the deceased, due to which impact, the deceased sustained injuries all over his body including head injury and succumbed to injuries. The learned counsel also would submit that in case scooter hits a person, such violent impact would not have been there, more particularly, when the inquest report and the Motor Vehicle Inspector's report would support the stand taken by the petitioners and sought to set aside the order and decree under challenge and to grant compensation claimed by the petitioners.

12. Perused the order and oral and documentary evidence let in by both sides. The Tribunal merely basing on the fact that PW.2 admitted in his cross-examination that he did not actually witness the occurrence, has discarded the evidence of PW.2 and accepted the evidence of RW.1, who was the driver of the RTC

bus. But, when intrinsically examined, the order does not disclose as to why the Tribunal has not considered the contents of Exs.A-1, A-2, A-3, A-4, A-6 and A-7. A perusal of Exs.A-1 to A-3 would unhesitatingly prove the involvement of the RTC bus. There is no whisper as to the presence of scooterist at the scene of occurrence at the relevant time. The version of the respondents, for the first time, forthcoming from the counter they filed, appears to be highly improbable. When kept in view, the injuries sustained by the deceased, as recorded in the postmortem report (Ex.A-5), rules out the possibility of sustaining such injuries, in case he was hit by a scooter, as the impact would not have been that violent when compared with deceased being hit by a heavy motor vehicle, such as the bus.

13. This apart, the inquest report would clearly show that the cause of death was recorded as being hit by the bus. That has been the opinion of the panchayatdars recorded therein. The Tribunal, observing that the petitioners failed to examine one of the panch witnesses, rejected the inquest report holding that the report is not proved in accordance with the evidentiary rule. Such approach of the Tribunal is improper. When Ex.A-6 is placed before the Tribunal, it is for the respondents to secure the witnesses and attack the contents of Ex.A-6. Further, mere assertion of RW.1 would not lead to an inference that the RTC bus was not involved in the accident for the reason that the evidence of RW.1 would clearly show that they, in fact, took the deceased immediately after the accident to Chaderghat Police Station from where he was directed to be produced before Kachiguda Police Station, on point of jurisdiction, and the Conductor then has taken him to Kachiguda Police Station and shifted to hospital. In case

the RTC bus was not involved at all in the accident that had taken place in this case, there was absolutely no need or necessity for RW.1 to get down from the bus and take the deceased to the police station along with conductor. Thus, it absolutely belies the evidence of RW.1 and the version placed before the Tribunal by the respondents in their counter that RW.1 heard the sound from behind and when he got down, found a scooter fallen at a distance from the deceased and the scooterist was running away. The very fact that number of the scooter is not mentioned either in the counter or in the evidence of RW.1 itself is sufficient to disbelieve the stand taken by the respondents as spoken to by RW.1. Hence, the Tribunal went totally on wrong assumption placing undue importance on the evidence of RW.1 and rejecting the claim though, there is clinching documentary evidence through Exs.A-1 to A-7 even including the evidence of PW.2. Thus, the order of the Tribunal, for the aforesaid reasons, can be viewed as perverse and, therefore, the finding recorded by the Tribunal that the RTC bus was not involved in the accident, is liable to be set aside and, accordingly, the same is set aside.

14. Now, turning to what would be just and reasonable compensation to which the petitioners are entitled, age of the deceased is forthcoming in postmortem report as '63' years though, the petitioners claimed that he was '53' years aged on the date of the accident. There is no other evidence placed by the petitioners to show the correct age of the petitioners by filing an electoral card or Aadhar Card or any other material. Therefore, the age of the deceased is taken as '63' years. The relevant multiplier '7' is applicable.

15. So far as the earnings of the deceased are concerned,

it is stated by PW.1 that he was working as cook. But, of course, there is no concrete evidence on record to show that he was a cook by profession. Still, taking into consideration that he must be earning around Rs.2,500/- per month and deducting 1/3rd therefrom, as the dependants are only three (03), annual loss of dependency is worked out to Rs.20,000/-. When multiplier '7' is applied the total loss of dependency works out to Rs.1,40,000/-. Besides the same, the petitioners are entitled to a total sum of Rs.50,000/- towards conventional sum. Thus, the petitioners, in all, are entitled to Rs.1,90,000/- (Rupees one lakh and ninety thousand) as compensation, with interest at the rate of 7.5% per annum thereon from the date of petition till realization, as per the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[1]. Out of the said compensation amount, a sum of Rs.80,000/- (Rupees eighty thousand) is apportioned towards the share of petitioner No.1, while Rs.55,000/- (Rupees fifty five thousand) is apportioned towards the shares of petitioner Nos.2 and 3 each, with proportionate interest and costs thereon.

16. In the result, the appeal is allowed, and the order and decree, dated 19-10-2004, in O.P. No.1996 of 2002, passed by the Tribunal, are set aside, and the claim petition is allowed in part, granting a sum of Rs.1,90,000/- (Rupees one lakh and ninety thousand) as compensation to the petitioners with interest at the rate of 7.5% per annum thereon from the date of petition till realization with respective apportionments, as indicated in the above. There shall be no order as to costs.

17. As a sequel thereto, miscellaneous applications, if any,
pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

November 25, 2015.
Mgr

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