

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.1249 of 2009

ORDER:

This appeal is filed under Section 173 of the Motor Vehicles Act (the Act) by the respondent—Andhra Pradesh State Road Transport Corporation, challenging the judgment and award dated 13.12.2007 passed in M.V.O.P. No.413 of 2006 on the file of the Motor Vehicles Accidents Claims Tribunal-cum-III Additional District Judge, (Fast Track Court), Ongole.

2. The parties hereinafter will be referred as they are arrayed before the Tribunal, for the sake of convenience.

3. The facts of the case leading to filing of the present appeal are, briefly, as follows: On 24.4.2006, Indla Ramesh was proceeding to Kanigiri from Pamur on Hero Honda motor cycle as pillion rider while M.Yedukondalu was riding the same. When they reached near Community Health Center, Kanigiri, the driver of R.T.C bus bearing No.AP 9Z 9112 had driven the same in a rash and negligent manner and hit the motor cycle. The accident occurred due to rash and negligent driving of driver of the RTC bus, against whom the Station House Officer, Kanigiri Police Station registered a case in Crime No.42 of 2006 under Section 304A IPC. In the accident, Ramesh fell down from the motor cycle and sustained multiple injuries. Immediately after the accident, Ramesh (hereinafter referred to as, the deceased) was shifted to Community Health Centre, Kanigiri where he succumbed to the injuries while undergoing treatment. By the time of the accident, the deceased was unmarried, aged about 22 years and used to earn Rs.4,000/- per month. The petitioner Nos.1 and 2 are parents and third petitioner is the unmarried sister of the deceased, and they are the dependants on the income of the deceased. The respondent being the owner of the crime bus is liable to pay compensation of Rs.4,00,000/- to the petitioners with interest and costs.

4. The respondent filed written statement denying the averments made in the petition, *inter alia*, contending that the accident occurred due to the negligent driving of the rider of motor cycle and there was no rashness or negligence on the part of the driver of the RTC bus. The petition is not maintainable for non-impleading of the rider, owner and insurer of the motor cycle. The amount of compensation claimed by

the petitioners, under various heads, is highly excessive and exorbitant. Hence, the petition may be dismissed.

5. Basing on the above pleadings, the Tribunal framed the following issues:

(1) Whether the death of deceased Indla Ramesh due to rash and negligent driving of the driver of the bus bearing No.AP 9Z 9112 RTC bus hitting the deceased?

(2) Whether the petitioners are entitled for compensation as prayed for. If so, to what extent and from whom?

(3) To what relief?

6. During the course of the trial, on behalf of the petitioners P.Ws.1 to 3 were examined and Exs.A1 to A6 were marked. On behalf of the respondent, R.W.1 was examined but no document was marked.

7. On appraisal of the oral and documentary evidence available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the RTC bus, which resulted in death of the deceased, and allowed the petition in part by awarding compensation of Rs.3,67,200/- directing the respondent to pay the same with interest at 7.5% per annum from the date of petition till the date of deposit. Feeling aggrieved by the judgment and award, the respondent preferred the present appeal.

8. Heard Sri P.Durga Prasad, learned counsel for the appellant and Sri Madhava Rao Nalluri, learned counsel for the claimants.

9. The contention of learned counsel for the appellant is three fold:- (1) the Tribunal failed to consider that accident occurred due to rash and negligent driving of the rider of motor cycle only; (2) the Tribunal ought to have deducted 50% of earnings of the deceased towards his personal expenses while determining loss of dependency; and (3) the amount of compensation awarded by the Tribunal under various heads is highly excessive and exorbitant. *Per contra*, learned counsel for the claimants submitted that the finding of the Tribunal that the accident occurred due to rash and negligent driving of driver of the RTC bus is supported by oral and documentary evidence. He further submitted that the petitioners filed the claim petition under Section 163A of the Act and therefore, the Tribunal rightly deducted 1/3rd of the income of the deceased towards his personal expenses. He also submitted that the Tribunal has awarded just and

reasonable compensation and there are no grounds to interfere with the judgment and award passed by the Tribunal.

10. Basing on the rival contentions, the points that arise for determination in this appeal are:

(1) Whether the accident occurred due to rash and negligent driving of the rider of the motor cycle or the driver of the RTC bus?

(2) Whether the Tribunal has awarded just and reasonable compensation by applying the correct multiplier or not?

Point No.1:

11. Admittedly, P.W.1 is not the eye witness to the accident and therefore, her testimony is no way helpful to prove the rashness or negligence on the part of the driver of the RTC bus. If the testimony of P.W.2 is taken into consideration, the accident occurred due to rash and negligent driving of driver of the RTC bus. As per the testimony of R.W.1 (the driver, who drove the crime bus at the time of accident), the RTC bus did not hit the motor cycle of the deceased. R.W.1 being the accused in the criminal case registered against him in respect of the accident, deposing falsehood in order to get acquittal in the criminal case cannot be ruled out completely. On the other hand, P.W.2 is an independent witness whose testimony cannot be discarded on flimsy grounds. In the cross-examination of P.W.2, nothing is elicited in support of the case of the respondent. The testimony of P.W.2 is cogent and convincing so far as the manner of the accident and negligent driving on the part of R.W.1 is concerned.

12. As per the recitals of Ex.A1 F.I.R., and Ex.A5 charge sheet, the accident occurred due to rash and negligent driving of driver of the RTC bus. If really the accident occurred due to negligence on the part of the rider of the motor cycle, there is every possibility of registration of criminal case against him. Non-registration of criminal case against the rider of the motor cycle also lends support to the version of the petitioners. Taking into consideration the oral and documentary evidence available on record, the Tribunal arrived at a conclusion that the accident occurred due to rash and negligent driving of the driver of the RTC bus. I am fully agreeing with the finding recorded by the Tribunal, on issue No.1. Having regard to the facts and circumstances of the case, this court is of the considered view that the accident occurred due to rash and negligent driving of the driver of the RTC bus, which

resulted in death of the deceased. Accordingly, point No.1 is answered against the appellant.

Point No.2:

13. The petitioners filed the claim petition under Sections 166 and 163A of the Act. The Tribunal awarded compensation by following Section 166 of the Act in some aspects and by following Section 163A of the Act in other aspects. The Tribunal deducted 1/3rd of income of the deceased towards his personal expenses. If the petition is treated as one under Section 166 of the Act, 50% of income of the deceased has to be deducted towards personal expenses, if the deceased is unmarried person. In the present case, the deceased is an unmarried person. At the time of arguments, learned counsel for the claimants submitted that the claim petition may be treated as filed under Section 163A of the Act only. The Motor Vehicles Act is a beneficial legislation. In view of the submission made by the learned counsel for the claimants, this court is treating the petition as filed under Section 163A of the Act only. Once the petition is filed under Section 163A of the Act the Tribunal has to award the compensation basing on the structured formula.

14. By the time of the accident, the deceased was unmarried and aged about 22 years. In case of death of unmarried persons, the age of mother or father, whichever is less, has to be taken into consideration for the purpose of taking appropriate multiplier. In the petition the age of the mother and father of the deceased is shown as 45 years and 52 years respectively. Therefore, the mother's age i.e., 45 years has to be taken into consideration. As per second schedule, appropriate multiplier for the age of 45 years is '15'.

15. To prove the income, the petitioners placed reliance on Ex.A6 lease agreement. The petitioners did not choose to examine one of the parties to Ex.A6. Therefore, the Tribunal rightly discarded Ex.A6. Basing on the material available on record, the Tribunal arrived at a conclusion that the deceased may earn Rs.2,700/- per month. The claimants have not filed appeal or cross-objections challenging findings of the Tribunal on the quantum of compensation. Therefore, I am of the considered view that the deceased may earn Rs.2,700/- per month. As per the second schedule, 1/3rd of the income of the deceased has to be deducted towards his personal expenses. The deceased may contribute Rs.1,800/- per month to the family members. Loss of dependency comes to (Rs.1,800 X 12 X 15) Rs.3,24,000/-. By following the second

schedule, the Tribunal rightly awarded an amount of Rs.2,500/- towards loss of estate and Rs.2,000/- towards funeral expenses. Thus the petitioners are entitled to a total compensation of Rs.3,28,500/-. Therefore, the finding of the Tribunal that the petitioners are entitled to Rs.3,71,700/- is not sustainable and the compensation payable by the respondent is liable to be decreased to Rs.3,28,500/-. Accordingly, the point is answered partly in favour of the appellant.

16. In the result, the appeal is allowed in part reducing the quantum of compensation from Rs.3,71,700/- to Rs.3,28,500/- with proportionate costs throughout and interest at 7.5% per annum from the date of petition till the date of deposit. The respondent shall deposit the same within a period of two months from the date of receipt of a copy of this judgment. Miscellaneous petitions if any pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

April 22, 2015.

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