HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

M.A.C.M.A.No.1871 of 2010

JUDGMENT:

Challenging the award and decree dated 20.11.2007 passed in O.P.No.643 of 2007 on the file of the Motor Accidents Claims Tribunal (District Judge), West Godavari at Eluru, the Andhra Pradesh State Road Transport Corporation (hereinafter referred to as "the Corporation), preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "the Act").

For the sake of convenience, the parties will hereinafter be referred to as arrayed in O.P.

The facts in issue are as under:

The claimants, who are the husband and children of one Tadisetti Vijayalaxmi, filed an application under Section 166 of the Act, claiming compensation of Rs.4,00,000/- for the death of said Tadisetti Vijayalakshmi in a road accident that occurred on 08.10.2005. It is stated that on that day at about 7.30 a.m. the deceased along with others boarded an auto bearing No. AP 37 V 9117 at Attili village to go to Velpur, when the auto reached on Tanuku to Attili Road at Ramachandrapuram Village, H/o. Relangi, an RTC bus bearing No.AP 10 Z 4801 driven by the first respondent in a rash and negligent manner and dashed the auto. As a result of which the deceased sustained injuries and succumbed to injuries while being shifted to a hospital at Tanuku. Since the accident took place due to rash and negligent driving by the first respondent, the second respondent being the employer of the first respondent, the third respondent the owner-cum-driver of auto in which the deceased was travelling and the fourth respondent being the insurer

of the auto, the claim petition was filed making all the respondents jointly and severally liable to pay compensation.

Respondent Nos.1 and 3 remained *ex parte.*

The second respondent filed counter denying the manner in which the accident took place and also the age, income and avocation of the deceased. It is specifically stated that there was no rashness or negligence on the part of the driver of the bus and that there was contributory negligence on the part of the third respondent. In any event it is stated that the claim made is excessive and exorbitant.

The fourth respondent filed counter denying the manner in which the accident took place and also the age, income and avocation of the deceased. It is specifically stated that there was no rash and negligence on the part of the third respondent and as per the F.I.R. and charge sheet the accident occurred only due to the rash and negligent driving of the first respondent.

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

1. Whether the accident occurred due to rash and negligent driving of the A.P.S.R.T.C. bus bearing No. AP 10 Z 4801, driven by its driver, first respondent?

2. Whether the petitioners are entitled for compensation? If so, what amount, against which of the respondents?

3. To what relief?

In support of their plea, the claimants examined PWs.1 and 2 and also got marked Exs.A1 to A4. On behalf of the respondents, no documentary evidence has been produced however Ex.B1 was marked on behalf of the fourth respondent.

After analyzing the oral and documentary evidence available on record, the Tribunal held that the accident took place due to the rash and negligent driving by the driver of the RTC bus and accordingly awarded a sum of Rs.4,00,000/- as compensation with interest at 7.5% p.a. from the date of petition till the date of realisation. Challenging the same the Road Transport Corporation filed the present appeal.

The learned counsel for the appellant mainly submits that there is any amount of doubt with regard to the manner in which the accident took place. According to him, it is a case of head on collision and there was a contributory negligence on the part of the third respondent. He further submits that the compensation awarded to the claimant is on higher side. He further submits that the Tribunal erred in taking the age of the deceased as 32 years in view of the ages of two children of the deceased which were shown as 16 and 12 years respectively.

Per contra, the learned counsel for the claimants submits that the future prospects of the deceased were not taken into consideration by the Tribunal while awarding compensation. The Tribunal also awarded meager compensation under the conventional heads. Insofar as the manner in which the accident took place, the counsel for the claimants submits that no oral or documentary evidence has been produced by the Corporation to prove that there was negligence on the part of the auto driver.

It is to be noted that the claimants have not preferred any appeal questioning the quantum of compensation awarded by the Tribunal. As stated earlier, the main ground urged by the learned counsel for the Corporation is with regard to the manner in which the accident took place. As seen from the record, the accident took

place on 08.10.2005 at about 7.30 a.m. on Tanuku to Attili Road at Ramachandrapuram village H/o. Relangi. On that day the deceased boarded auto bearing No. AP 37 V 9117 at Attili in order to go to Velpur. When the auto reached the scene, one RTC bus bearing No. AP 10 Z 4801 driven by the first respondent in a rash and negligent manner dashed the auto. As a result of which, the deceased sustained injuries and succumbed to injuries while shifting to hospital. PW.2 who is a direct eye witness to the accident, deposed about the manner in which the accident took place. He categorically stated that the accident occurred only due to the rash and negligent driving of the driver of the bus and the same was reflected in Ex.A1 a copy of the First Information Report. The evidence of PW.2 also gets corroboration from the contents of the charge sheet (Ex.A4) filed by the police against the driver of the bus. Though P.W.2 was cross-examined at length, nothing useful was elicited to discredit his testimony.

It is to be seen that the Corporation has not adduced either oral or documentary evidence to prove that there was contributory negligence on the part of the auto driver. Even the driver of the bus who was present at the time of accident was not examined to prove the negligence on the part of the auto driver. In the absence of any contra evidence, it cannot be said that there was a contributory negligence on the part of the driver of the auto. Hence, the argument of the learned counsel for the appellant is rejected.

Coming to the quantum of compensation to be awarded, the learned counsel for the appellant submits that having regard to the age of the children of the deceased, the age of the deceased has to be fixed at 42 or 43 years. It is very difficult to accept the plea of the appellant on such a surmise. The Post Mortem Examination Report which has been placed on record as Ex.A2 clearly discloses

the age of the deceased as 32 years at the time of accident. No contra evidence has been adduced to dispute the same and infact it was not even suggested to any of the witnesses that the deceased was aged more than 32 years at the time of accident. In view of the above circumstances, the argument of the learned counsel for the appellant is repelled.

For the aforesaid reasons, I am of the view that there are no merits in the appeal and the same is liable to be dismissed.

Accordingly, the appeal is dismissed confirming the award dated 20.11.2007 passed in O.P.No.643 of 2007 on the file of the Motor Accidents Claims Tribunal (District Judge), West Godavari at Eluru. There shall be no order as to costs.

The miscellaneous petitions, if any pending, shall stand closed.

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C. PRAVEEN KUMAR, J

11.08.2015
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