

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.1105 OF 2010

JUDGMENT:

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This appeal is filed by the appellants/respondent Nos. 2 and 3 challenging the judgment and award, dated 30.03.2009 passed in M.V.O.P.No.86 of 2008 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VII Additional District Judge, Ongole (for short, 'the Tribunal').

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

3. The facts leading to filing of the present appeal are, briefly, as follows:

On 25.01.2007, Smt. Katti Subhashini boarded the A.P.S.R.T.C. Bus bearing No.AP-10Z-9484 at Uppugundur to go to Chirala. When the bus reached Krishna Kaluva turning at Uppugundur, the driver of the bus had driven the same in a rash and negligent manner due to which, Smt. Katti Subhashini fell down from the bus. The accident occurred due to the rash and negligent driving of the driver of the RTC bus against whom the Station House Officer, Chinaganjam Police Station registered a case in Crime No.4 of 2007 for the offence punishable under Section 304-A I.P.C. Due to injuries, Smt. Katti Subhashini (hereinafter referred to as 'the deceased') died on 30.01.2007. By the time of accident, the deceased was aged about 30 years and used to earn Rs.3,000/- per month. Petitioner Nos.1 to 3 are the mother and children of the deceased. The husband of the deceased deserted her much prior to the accident. The petitioners are dependants on the income of the deceased. The RTC bus belongs to respondent Nos.1 to 3. Hence, the petition is filed claiming compensation of Rs.5,00,000/- from the respondents.

4. Respondent No.1 filed counter denying all the averments made in the petition *inter alia* contending that after crossing of Uppugundur Village, the deceased boarded the RTC bus and sat on the foot board of the bus. The accident occurred due to the negligence of the deceased and there was no negligence on the part of this respondent. The present petition is not maintainable for non-impleading the necessary and proper parties. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant.

5. Respondent Nos.2 and 3 filed common counter denying all the averments made in the petition *inter alia* contending that after crossing of Uppugundur Village, one deaf and dumb lady passenger boarded the RTC bus. When the bus reached near Kommamur canal, the deaf and dumb lady got down from the running bus thereby, sustained injuries. Immediately after the accident, she was shifted to Government Hospital, Chirala and from thereto, Guntur General Hospital. The accident occurred due to the negligence of the deceased and there was no negligence on the part of the driver of the RTC bus. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

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

- (1) Whether the accident occurred due to the rash and negligent driving of the RTC bus bearing No.AP 10Z-9484 by its driver?
- (2) Whether the petitioners are entitled to the compensation? If so, to what amount and from whom?
- (3) To what relief?

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7. During the course of trial, on behalf of the petitioners, P.Ws.1 and

2 were examined and Exs.A.1 to A.4 were marked. On behalf of the respondents, RW.1 was examined and no documents were marked.

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8. Basing on the oral, documentary evidence and other material 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 the death of the deceased and allowed the petition in part by awarding compensation of Rs.3,50,000/- with interest at 9% per annum from the date of petition till the date of realisation by directing respondent

Nos.1 to 3 jointly and severally to deposit the compensation amount.

9. Feeling aggrieved by the judgment and award of the Tribunal, respondent Nos.2 and 3 – A.P.S.R.T.C. preferred the present appeal.

10. Heard Sri P.Durga Prasad, the learned Standing Counsel for A.P.S.R.T.C.

11. The contention of the learned Standing Counsel for respondent Nos.2 and 3 is three fold: (1) The Tribunal failed to consider that the accident occurred due to negligence of the deceased and there was no negligence on the part of the RTC bus driver; (2) The amount of compensation awarded under various heads is highly excessive and exorbitant; and (3) The Tribunal awarded interest at the rate of 9% per annum, which is on higher side.

12. Per contra, the learned counsel for the petitioners submitted that the Tribunal awarded just and reasonable compensation.

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

1. Whether there was negligence on the part of the deceased to cause the accident and if so, to what extent?

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2. Whether the Tribunal has awarded just and reasonable compensation to the petitioners or not?

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3. Whether the rate of interest awarded by the Tribunal is on

higher side or not?

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Point No.1:

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14. In order to prove the manner of the accident, PWs.1 and 2 were examined and Exs.A.1 to A.4 were marked. To demolish the case of the petitioners, respondent No.1 examined himself as RW.1. The oral testimony of PWs.1 and 2 clearly reveals that the accident occurred on 25.01.2007 at about 11:00 AM near Uppugundur Village. PW.1 is not an eye witness to the accident. Therefore, her testimony is no way helpful to prove the manner of the accident. RW.1 is the driver of the RTC bus. If the testimony of PW.1 is taken into consideration, the accident occurred due to the rash and negligent driving of the driver of the RTC bus (RW.1). If the testimony of RW.1 is taken into consideration, the accident occurred due to the negligent act of the deceased. In the cross-examination of PW.2, nothing is elicited to shake his testimony so far as the manner of the accident is concerned. Respondent Nos.2 and 3 have taken a specific plea in the counter that the deceased herself got down from the running bus and thereby, fell down and sustained injuries. If the bus door was locked, there is no possibility for the deceased to get down from the running bus. It is the duty of the conductor and the driver of the bus to verify whether the door of the bus locked or not before starting of the bus. RW.1, being an employee of respondent Nos.2 and 3, the possibility of distortion of the facts at the instance of his higher officials cannot be ruled out. In order to get acquittal in the criminal case registered against him, the possibility of deposing false by RW.1 cannot be ruled out completely. As observed earlier, PW.2 is an independent witness, whose testimony cannot be discarded on flimsy grounds. The oral testimony of RW.1 is not supported by any documentary evidence. The oral testimony of PW.2 is fully supported by the recitals Exs.A.1 – Certified Copy of F.I.R. and A.4 – Certified Copy of Charge Sheet. If really the

accident occurred as narrated by respondent Nos.2 and 3, what prompted the Police to register a criminal case against RW.1? This aspect also lends support to the version of the petitioners. Basing on the material available on record, the irresistible presumption that can be drawn is that the accident occurred due to the rash and negligent driving of the driver of the RTC bus which resulted in the death of the deceased. I am fully agreeing with the finding recorded by the Tribunal. In the light of the foregoing discussion, I am unable to accede to the contention of the learned Standing Counsel for A.P.S.R.T.C. that the Tribunal committed error while fixing the negligence on the RW.1 only.

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POINT No.2:

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15. By the time of accident, the deceased was aged about 30 years. The Tribunal has taken the multiplier as '17'. As per the principle enunciated in **Sarla Verma v. Delhi Transport Corporation**^[1], the appropriate multiplier to be taken for the age group of 26 to 30 years is '17'. Therefore, I am of the considered view that the Tribunal has rightly taken the multiplier as '17'. As rightly pointed out by the learned Standing Counsel for A.P.S.R.T.C., the petitioners have not adduced documentary evidence to prove the income of the deceased. It is not possible for rustic villagers to produce the documents to prove the income. It is very difficult for the coolies more particularly in the villages to secure documentary evidence. The Tribunal or the Court has to take into consideration the ground realities while considering the income of the villagers. It is a known fact that the women folk will also attend the coolie work in the villages. Taking into consideration the age of the deceased and other attending circumstances, I am of the considered view that the Tribunal has rightly taken the income of the deceased as Rs.2,500/- per month. The Tribunal rightly deducted

1/3rd towards personal expenses of the deceased. After following the procedure, the Tribunal arrived at a conclusion that the loss of dependency comes to Rs.3,40,000/-. The Tribunal also rightly awarded a sum of Rs.10,000/- towards funeral expenses, hospital expenses and other incidental charges. The amount of compensation awarded by the Tribunal is just and reasonable viewed from any angle. Hence, there are no grounds much less valid grounds to interfere with the judgment and award of the Tribunal so far as the quantum of compensation is concerned.

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POINT No.3:

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16. A perusal of the record reveals that the Tribunal awarded interest at the rate of 9% per annum. Section 171 of the Motor Vehicles Act, 1988 (for short, 'the Act') enables the Tribunals to award interest from the date of petition till the date of realisation. However, Section 171 of the Act is silent with regard to the rate of interest to be awarded by the Tribunals. The Tribunal has to exercise its discretionary power judiciously basing on the sound principles of law. While awarding the rate of interest, the Tribunal has to take into consideration the prevailing rate of interest charged in the locality as well as the guidelines issued by the Reserve Bank of India from time to time.

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17. At this juncture, this Court is placing reliance on the ratio laid down in **Puttamma Vs. K.L.Narayana Reddy** ^[2], wherein the Hon'ble Apex Court held at para No.62 as follows:

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"In view of the aforesaid provisions of the Act, 1988 (Section 171) and the observation of this Court, as noticed above, we keep this question open for Tribunals and Courts to decide the rate of interest after taking into consideration the rate of interest allowed by this Court in similar case and other factors such as inflation, change in economy, policy adopted by the Reserve Bank of India from time to time and the period since when the

case is pending.”

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18. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that the Tribunal has rightly exercised its discretionary power and awarded interest at the rate of 9% per annum. Hence, there are no grounds much less valid grounds to reduce the rate of interest awarded by the Tribunal.

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19. In the result, the Appeal is dismissed. There shall be no order as to costs.

20. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 18.03.2015

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[\[1\]](#) . 2009 ACJ 1298

[\[2\]](#) (2013) 15 SCC 45