

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.1180 of 2009

JUDGMENT:

Aggrieved by the Award dated 16.11.2006 in O.P.No.500 of 2006 passed by the Chairman, M.A.C.T-cum-District Judge, West Godavari at Eluru (for short 'the Tribunal'), the 2nd respondent-APSRTC preferred the instant MACMA.

2) The factual matrix of the case is thus:

a) On 09-09-2003 at about 8.30PM, when the deceased—Valluri Eswara Rao was travelling in lorry bearing No.AP 7W 1467 as loading and unloading coolie, an APSRTC bus bearing No.AP 10 Z 8936 being driven by its driver at high speed and in a rash and negligent manner, dashed the stationed lorry from behind, due to which the deceased sustained grievous injuries and while shifting to hospital, he succumbed to injuries. It is averred that accident was occurred due to rash and negligent driving by the driver of the APSRTC bus. On these pleas, the claimants filed O.P.No.500 of 2006 under Section 166 of Motor Vehicles Act, 1988 (for short "the Act") against Respondent Nos.1 and 2, who are driver and APSRTC respectively and claimed Rs.3,00,000/- as compensation.

b) Respondent No.1 remained *ex parte*.

c) The second respondent/Insurance Company filed counter denying all the material averments and urged to put the claimants in strict proof of the same. R2 contended that claim of

the claimants is highly excessive and exorbitant and prayed to dismiss the OP.

d) During trial, PWs.1 and 2 were examined and Exs.A1 to A4 were marked on behalf of claimants. RW1 was examined on behalf of respondents.

e) On appreciation of both oral and documentary evidence, the Tribunal awarded total compensation of Rs.3,00,000/- with costs and interest @ 7.5% p.a against respondents 1 and 2.

Hence, the appeal by APSRTC.

3) The parties in the appeal are referred as they stood before the Tribunal.

4) Heard arguments of Sri S.V.Ramana, learned counsel for appellant/ APSRTC and Sri Naram Nageswara Rao, learned counsel for respondent Nos.1 to 3/claimants. R4/driver is not necessary party in this appeal vide cause title.

5 a) Impugning the award, learned counsel for appellant firstly contended that the accident was occurred only due to the fault of the lorry driver and the deceased, inasmuch as the lorry driver stopped the lorry on the middle of the road and did not place any parking lights or other indicators. Due to it and the glare of opposite coming vehicles, RW.1 who was the driver of the APSRTC bus could not identify the lorry and thereby he dashed the lorry and in the process, the deceased and another

who were boarding eucalyptus logs suffered injuries and hence, there was no fault of the bus driver and this fact was clearly spoken by RW.1 in his evidence and despite the same, the Tribunal without appreciating evidence in a proper perspective fixed fault on the bus driver.

b) Secondly, learned counsel argued that compensation awarded under different heads was highly excessive and exorbitant and same has to be reassessed. He thus prayed to allow the appeal.

6 a) Per contra, learned counsel for respondents/claimants firstly argued that the bus driver (RW.1) himself was responsible for the accident inasmuch as he drove the vehicle in the night time at high speed and in a rash and negligent manner and dashed the rear side of a stationed lorry and thus caused injuries to the deceased and another who were loading the eucalyptus logs. Learned counsel vehemently argued that the lorry was stopped by the road margin but not in the middle of the road which is evident from Ex.A.1—FIR lodged by the none other than RW.1 himself. Learned counsel submitted that the police after thorough investigation laid charge sheet against RW.1 which would also show that he was responsible for the accident.

b) Secondly, learned counsel argued that compensation awarded under different heads was just and reasonable and does not require reconsideration. He thus prayed to dismiss the appeal.

7) In the light of above rival arguments, the point for determination in this appeal is:

“Whether the award passed by the Tribunal is factually and legally sustainable?”

8) **POINT**: Admittedly the accident took place on the night of 09.09.2003 at about 8:30pm near New Petrol Bunk, K.Bitragunta village. At that time the lorry in which the deceased and other coolies were transporting eucalyptus logs from Pondicherry to Rajahmundry, reached near Petrol Bunk and some logs fell down on the road and the lorry also required minor repairs. Then the lorry was stopped and when the deceased and another were loading the logs into the lorry, the offending bus came behind and dashed them and also the lorry and thus caused the accident. The claimants in order to prove the fault of the bus driver examined PW.2—the driver of the stationed lorry bearing No.AP 7 W 1467. He stated that when they reached the petrol bunk at K.Bitragunta village, some eucalyptus logs fell down on the road side and his lorry also required some small repairs and so at about 8:30pm, he stopped the lorry. When the deceased and another were loading the eucalyptus logs, the offending bus came from Kandukuru at high speed being driven in a rash and negligent manner and also without blowing horn dashed the stationed lorry and also the coolies i.e, the deceased and one Gurram

Srinivas Rao and thus caused the accident. He avouched that the accident was occurred due to the fault of bus driver. In the cross-examination, he denied the suggestion that he did not notice the accident and he was deposing falsehood. Per contra, the APSRTC examined its driver i.e, RW.1. He deposed that at the time of accident he was proceeding very slowly and in view of the darkness and due to the focus of the mercury lights of the opposite vehicles, he could not find out the stationed lorry which was parked in the middle of the road without parking signals and as such, he dashed the vehicle and there was no fault in him.

a) Thus we have divergent evidence on the manner of occurrence of accident. It is the contention of RW.1 that the lorry was stopped in the middle of the road, due to which and the focus of the lights of opposite vehicles, he could not locate the lorry and thereby he went and dashed the stationed lorry. Ex.A.1—FIR was registered on the statement of RW.1 himself. In his statement he deposed that the lorry was parked on the margin of the road. As such it is clear that the lorry was not parked on the middle of the road as deposed by him and on the other hand, it was parked on the margin of the road. Even otherwise if the lorry was parked on the middle of the road on the highway during night time, generally passage to a number of vehicles will be obstructed causing traffic jam. That was not the case here. Therefore, the evidence of RW.1 that due to parking of the lorry in the middle of the road and he could not

locate the lorry, cannot be accepted. On the other hand, as deposed by PW.2, RW.1 went at slow speed and dashed the stationed lorry unable to control his vehicle. If really he was driving the bus at high speed and lorry was parked on the middle of the road, nothing prevented the respondent to examine any of the passengers in the bus to substantiate the claimant of RW.1. Above all, the police after investigation laid charge sheet against the bus driver. So on a consideration of facts and evidence, I hold that RW.1 himself was responsible for the accident and the Tribunal was right in that regard.

9) Coming to the quantum of compensation, the Tribunal having considered the age of deceased as 30 years and taking his avocation as coolie work, fixed his monthly income as Rs.3,000/- and accordingly computed compensation. Ultimately, though it arrived the total compensation at Rs.4,25,240/- but restricted the same to Rs.3,00,000/- since the claim of the claimants was only Rs.3,00,000/-. I find no excessiveness or exorbitance in the quantum of compensation awarded by the Tribunal.

10) In the result, I find no merits in the appeal and the same is accordingly dismissed by confirming the award passed by the Tribunal in O.P No.500 of 2006.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 24.06.2015

scs