

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.M.A.Nos.650 and 651 OF 2004

COMMON JUDGMENT:

The APSRTC-the 1st respondent to the two claim petitions viz; M.V.O.P.No.182 of 2002 maintained by wife, two minor children and mother of deceased Naganna aged about 40 years as per the Ex.A.4 postmortem report, and the M.V.O.P.No.181 of 2002 (both petitions under Section 166 of the M.V.Act), is maintained by the injured no other than wife of deceased Naganna, who were among more than 14 persons travelling in the auto bearing No.AP 7/U.6352 with capacity of 3+1 on fateful day of accident, dated 05.10.2001 that was occurred on N.H.7 road within the Pullur village limits at Kurnool while the auto was proceeding towards Kurnool, due to rash and negligent driving of the driver of the APSRTC bus bearing No.AP 11 Z 460 which came in opposite direction in high speed, dashed against the auto, due to which 8 passengers including Naganna died on the spot and 6 persons including Lakshmidēvi received grievous and multiple injuries, claimed by the injured Lakshmidēvi for Rs. 1,50,000/- in M.V.O.P.No.181 of 2002 since granted 68,800/- and Rs.2,50,000/- in M.V.O.P.No.182 of 2002 by the injured Lakshmidēvi, her two minor children and aged mother-in-law i.e. wife, children and mother of deceased Naganna, since granted 1,89,500/- with interest at 9% p.a. in both the petitions fixing liability on the 1st respondent-APSRTC., aggrieved by the common award dated 18.11.2003 passed by the learned Chairman of the Motor Accidents Claims Tribunal–cum–Principal District Judge, Kurnool, preferred these appeals with the common contentions in the grounds of appeals that the accident occurred due to the sheer negligent driving of the driver of the bus-R.W.1 of the APSRTC bus. In fact, the Ex.A.1 First Information Report and Ex.A.2 chargesheet clearly speak that 6 persons injured and 8 persons died among the passengers in the auto and auto as referred supra is with heavy overload not mere one or two extra passengers, that the tribunal failed to see that the auto driver is responsible for causing accident by allowing overload of passengers, hence to set aside the award of the tribunal. The learned standing counsel for the APSRTC in both the appeals reiterated the respective contentions during course of hearing.

2. The respondents 2 to 4 in both the M.V.O.P.Nos.181 and 182 of 2002 are added as per orders in I.A.No.1425 of 2003 dated 06.10.2003. In this Court, the

appeal against 2nd respondent in C.M.A.No.650 and 5th respondent in C.M.A.No.651 of 2004 by name K.Srinivasulu is dismissed for default vide order dated 23.09.2011.

3. Whereas, it is the contention of the learned counsel for the claimants as respondents in the two appeals respectively that the award of the tribunal holds good for this Court while sitting in appeal there is nothing to interfere.

4. Perused the material on record. The parties hereinafter are referred to as arrayed before the Tribunal for the sake of convenience in both the appeals.

5. Now the common points that arise for consideration in both the appeals are:

1. *Whether there is any contributory negligence on the part of the auto driver in causing accident, if so, with what observations?*
2. *Whether the compensation awarded by the Tribunal is excessive and exorbitant and requires interference by this Court while sitting in appeal against the common award dated 18.11.2003 and if so what is just compensation to arrive and with what rate of interest?*

3. *To what result?*

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6. As common question of law involved in both the claims and the for the outcome of same accident, both the appeals taken up together.

Point No.1:

7. The contention of the appellant-APSRTC including from the evidence of R.W.1-driver of the bus is that the accident was the result of the driver of the auto for no fault of the bus driver. Undisputedly the accident took place in broad day light at about 2.30 P.M. while both vehicles were proceeding in opposite direction, that too, auto is with heavy overload for which the Court to take judicial notice of the factum that when the auto with 3+1 capacity is proceeding with more than 14+1, definitely auto driver cannot control and the tribunal gravely erred in ignoring the same. No doubt even FIR and chargesheet also show the manner of the accident and equally from Ex.A.5 MVI report. When the MVI report also shows damage caused to two

vehicles by head on collision. It is just to hold that there is a composite negligence of the auto driver as well as the bus driver. The tribunal thereby went wrong, as rightly contended by the learned counsel for the appellant-APSRTC in the two appeals, in finding fault with the bus driver only despite the above evidence. As contributory negligence or composite negligence depends upon several factors like width and condition of the road, size of the vehicle and damage caused to the vehicles involved in the accident, it is just to fix 40% contribution on the part of the auto driver and 60% on the part of the bus driver. Accordingly, point No.1 is answered.

Point No.2:

8. Now coming to the quantum of compensation, so far as the injuries claimed in O.P.No.181 of 2002 by the injured-Lakshmidevi, there are 8 injuries sustained by the injured as per Ex.A.7 wound certificate of which 4 are the fractures and 4 other are simple injuries including from the evidence of P.W.2-doctor, though there is no disability certificate filed and there is no basis to believe the disability of 10% from any restriction of the functional movements for the 4 fractures and for 4 simple injuries. An amount of Rs.70,000/- is just for the 4 fractures and also Rs.10,000/- for the 4 other simple injuries besides that towards medical expenses, attendant charges, transport charges, extra nourishment, loss of earnings an amount of Rs.20,000/- which comes to Rs.1,00,000/- in total and out of which 60% liability of the RTC, it comes to Rs.60,000/-.

9. Coming to the claim in O.P.No.182 of 2002 for the death of deceased Naganna, with regard to the earnings of the deceased, as per **Latha Wadhwa vs. State of Bihar** Rs.3,000/- per month to be taken even for a non-earning member or a housewife, as the accident was dated 05.10.2001 even taken Rs.3,100/- per month at the time of accident, if 1/4th deducted towards personal expenses as per expression in **Sarla Verma v. Delhi Transport Corporation** where the dependants are more than three and the claimants are 4 in number and all are dependants, Rs.2,325/-p.m.x12x14.5(multiplier even taken from the age of the deceased 40 years), it comes to Rs.4,04,550/- besides Rs.1,00,000/- towards loss of consortium to the wife of deceased Lakshmidevi-the 1st claimant in both the petitions, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of estate and Rs.20,000/- towards care and guidance of minor children as per **Rajesh v. Rajbir Singh**, in all it

comes to Rs.5,59,550/- of which 60% liability of the appellant-APSRTC comes to Rs.3,35,730/- and what the tribunal awarded of Rs.1,89,000/- no way excessive but for no cross-objections to enhance but for to reduce the rate of interest from 9% p.a. awarded by the tribunal to 7.5% p.a. from the date of appeal in both the appeals. Accordingly, Point No.2 is answered.

Point No.3:

10-a) In the result, both the appeals are partly allowed, by enhancing compensation from Rs.68,000/- to Rs.1,00,000/- 60% liability of the appellant-APSRTC is of Rs.60,000/- O.P.No.181 of 2002 covered by CMA No.650 of 2004 with interest at 9%p.a. from the date of claim petition till date of appeal and at 7.5% from the date of appeal till realization.

10-b). In O.P.No. 182 of 2002 covered by CMA No.651 of 2004 by confirming the compensation awarded by the tribunal of Rs.1,89,500/- but 40% contributory negligence on the part of the auto driver and 60% on the part of the APSRTC bus driver which comes to Rs.1,13,700/-. Rest of the terms of the common award of the tribunal holds good. The appellant-APSRTC is directed to deposit amount with interest within one month from the date of receipt of copy of judgment if not already deposited, failing which the claimants can execute and recover. On such deposit or execution and recovery, the claimants are permitted to withdraw the same. The claimants can proceed separately for the remaining 40% liability against the auto driver. There is no order as to costs in both the appeals. Miscellaneous petitions, if any, pending in these appeals shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:09.02.2015

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