

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.99 of 2013

JUDGMENT:

1 Respondent in M.V.O.P.No.244 of 2010 on the file of Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Mahabubnagar filed the present appeal under Section 173 of the Motor Vehicles Act, challenging the Judgment and award dated 30.08.2012 passed in the said O.P. wherein and whereby an amount of Rs.7,70,000/- was awarded as compensation as against the claim of Rs.15.00 lakhs.

2 For the sake of convenience, parties to this appeal will hereinafter be referred as they are arrayed before the Tribunal.

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

4 On 28.01.2010 Mohd. Mustafa and others were proceeding to Kurnool from Hyderabad in a Swift car bearing No.AP-09/FST/R-5937. When the car reached Kothakota village, the driver of the RTC bus bearing No.AP-28-Z 4994 had driven the same in a rash and negligent manner and dashed against the car. The accident occurred due to the rash and negligent driving of the driver of the RTC bus bearing No.AP 28-Z-4994 against whom, the Station House Officer, Kothakota P.S. registered a case in Cr.No.16 of 2010 under Sections 304-A and 337 of IPC. Due to the accident, Mohd. Mustafa (hereinafter referred to as 'the deceased') sustained grievous injuries and died on the way to the hospital. By the time of death, the deceased was aged 53 years and used to earn Rs.8,000/- per month as Muazzan of Masjid-e-Ujale Shah, Sayeedabad. He was also working as

Head of the department of Madarsa-Un-Noor, Sayeedabad, Hyderabad as Hifz-E-Quran and was getting a monthly income of Rs.6,000/-. The deceased was an income tax assessee prior to the incident. First petitioner is wife and petitioner Nos.2 to 5 are sons of the deceased and they are all dependents on the income of the deceased. The respondent being the owner of the RTC bus bearing No.AP-28-Z 4994 is vicariously liable for the wrongful acts done by its driver in the course of employment. Hence the petitioners filed the claim petition seeking compensation of Rs.15.00 lakhs from the respondent.

5 The respondent filed counter denying the various averments made in the petition including the age and income of the deceased. The accident occurred due to the rash and negligent driving of the driver of the Swift car bearing No.AP-09/FST/R-5937 and that there was no negligence on the part of the driver of the RTC bus. The petition is not maintainable for non-impleading of the driver and owner of the Swift car bearing No.AP-09/FST/R-5937. The amount of compensation claimed by the petitioners is highly excessive and exorbitant. Hence the petition may be dismissed.

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

- i. Whether the accident dated 28.1.2010 in which the deceased by name Mohd. Mustafa died occurred due to the rash and negligent driving of the driver of APSRTC bus bearing No.AP-28/Z-4994?
- ii. Whether the petitioners are entitled for compensation, if so, to what amount?
- iii. To what relief?

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7 During the course of trial, on behalf of the petitioners

P.Ws.1 to 4 were examined and Exs.A.1 to A.12 were marked. On behalf of the respondent R.Ws.1 and 2 were examined but no document was marked.

8 On appreciation of 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 bearing No.AP-28-Z 4994 which resulted in the death of the deceased and allowed the petition in part by awarding compensation of Rs.7,70,000/- with interest at 7.5% p.a. form the date of filing of the petition till the date of deposit. Feeling aggrieved by the said judgment and award of the Tribunal, the respondent preferred the present appeal.

9 The petitioners / respondents, having received notice, did not choose to contest the appeal. Hence I am inclined to dispose of the appeal in the absence of the petitioners.

10 The contention of the learned counsel for the respondent is that the Tribunal committed error while arriving at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the RTC bus bearing No.AP-28-Z 4994. He further submitted that the Tribunal awarded the compensation on assumptions and presumptions, which is not permissible under law.

11 Now the points that arise for determination in this appeal are:

1. Whether the accident occurred due to the rash and negligent driving of the driver of the RTC bus bearing No.AP-28-Z 4994, which resulted in the death of the deceased?

ii. Whether compensation awarded by the Tribunal is just and reasonable or not?

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Point No.1:

12 Admittedly, P.W.1 is not an eyewitness to the accident. Therefore, her evidence is no way helpful to the case of the petitioners. As seen from the testimony of P.W.2, on the date of accident, he was travelling along with the deceased. As per the testimony of P.W.2, the accident occurred due to the rash and negligent driving of the driver of the RTC bus bearing No.AP-28-Z 4994. As per the testimony of R.W.1, who was the conductor of the bus, there was no negligence on the part of the driver of the bus to cause the accident. In the cross-examination he categorically stated that he has not observed the accident. R.W.1 being an employee of the respondent – Corporation, the possibility of distortion of the facts by him cannot be ruled out completely.

13 As seen from the testimony of R.W.2, the investigating officer, he investigated into the matter and filed charge sheet against the driver of the bus. Nothing is elicited in the cross-examination of P.W.2 to shake his testimony so far as the manner of accident is concerned. In fact, R.W.2 supported the version of the petitioners.

14 As per the recitals of Exs.A.1, A.4, A.5 and A.6, the accident occurred due to the rash and negligent driving of the driver of the RTC bus bearing No.AP-28-Z 4994. As per the recitals of Ex.A.2 – inquest panchanama and Ex.A.3 – postmortem certificate, the deceased died due to the injuries sustained by him in a road accident. The Tribunal rightly

appreciated the oral testimony of P.W.1, P.W.2, R.W.1 and R.W.2 and the recitals of Ex.A.1 to A.6 and arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the RTC bus bearing No.AP-28-Z 4994, which resulted in the death of the deceased. There are no grounds much less valid grounds to interfere with the finding recorded by the Tribunal on issue No.1. Basing on the oral and documentary evidence available on record, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the RTC bus bearing No.AP-28-Z 4994, which resulted in the death of the deceased. The point is answered accordingly.

Point No.2:

15 By the time of death, the deceased was aged about 53 years. The Tribunal has taken the multiplier 10. The oral testimony of P.Ws.3 and 4 coupled with Ex.A.8 clearly reveals that by the time of accident, the deceased was earning Rs.8,000/- p.m. As per the income tax returns, the gross annual income of the deceased is Rs.1,29,470/- Basing on the oral and documentary evidence available on record, the Tribunal arrived at a conclusion that the income of the deceased per annum was Rs.1.00 lakh. The claimants are 5 in number. In view of the principle enunciated in **Sarla Verma Vs. Delhi Transport Corporation** ^[1], 1/4th has to be deducted towards personal expenses of the deceased. Thus, the contribution of the deceased to the family would come to Rs.75,000/- p.a. Therefore, the loss of dependency would come to Rs.75,000/- X 10 = Rs.7,50,000/-. The Tribunal awarded an amount of Rs.5,000/- towards loss of estate, Rs.5,000/- towards funeral

expenses and Rs.10,000/- towards loss of consortium. The total amount of compensation awarded by the Tribunal comes to Rs.7,70,000/-. The claimants have not preferred any appeal or cross objections challenging the quantum of compensation awarded by the Tribunal. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the respondent that the amount of compensation awarded by the Tribunal is on higher side. In fact, the Tribunal has awarded just and reasonable compensation to the petitioners.

16 For the foregoing discussion, I see no merits in this appeal. The appeal lacks merits and bonafides and hence the same is liable to be dismissed.

17 In the result, the appeal is dismissed. As a sequel, the miscellaneous petitions, pending in this appeal, if any, shall stand closed.

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T. SUNIL CHOWDARY, J

Date: 13th August, 2015
Kvsn

[\[1\]](#) (2009) 6 SCC 121