

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A.C.M.A. No.32 OF 2007

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JUDGMENT:

The instant appeal is preferred by the petitioners aggrieved of the order and decree, dated 27-09-2006, in M.V.O.P. No.208 of 2004, passed by the learned Chairman, Motor Accidents Claims Tribunal – cum – IV Additional District Judge (Fast Track Court), Ongole (for short 'the Tribunal'), whereby and whereunder, a sum of Rs.3,68,648/- (Rupees three lakhs sixty eight thousand six hundred and forty eight only) was granted as compensation with interest at 7.5% per annum as against the claim of Rs.5,00,000/- (Rupees five lakhs only) laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), mulcting liability on the 1st respondent, owner of the Van while dismissing the claim against respondent Nos.2 and 3, the insurer and Andhra Pradesh State Road Transport Corporation (APSRTC), as the deceased was travelling in a goods vehicle as gratuitous passenger and no liability can be fasted on Insurance Company, while no negligence was found on the driver of the 3rd respondent's bus in occasioning the accident.

2. The appellants herein are the petitioners in the M.V.O.P. before the Tribunal while respondent Nos.1 and 2, who are owner and insurer of van bearing registration No.AP 27T 4689 are respondent Nos.1 and 2, respectively, and respondent No.3 is respondent No.3.

3. For the sake of convenience, the parties are hereinafter

referred to as they were arrayed in the O.P. before the Tribunal.

4. The facts, in brief, are that on 15-06-1998, one

A. Ramanaiah, husband of the 1st petitioner, father of the 2nd and 3rd petitioners and son of the 4th petitioner, boarded Allwyn Van bearing registration No.AP 27T 4689 to go to Zilla Parishad High School, Veerabhadrapuram, in which he was working as Record Assistant and when it reached near Mandal Revenue Office of Valvetivaripalem, the van driver since drove it in a rash and negligent manner, it dashed the RTC bus bearing No.AP 9Z 6455 belonging to the 3rd respondent coming in opposite direction, occasioning the death of A. Ramanaiah, who is hereinafter referred to as 'the deceased' and also three more persons, who were travelling in the said van. The petitioners claiming that they lost their earning member, sought to grant a sum of Rs.5,00,000/- as compensation with interest at 12% per annum, quantifying the amounts under different heads.

5. The 1st respondent, owner of the van, filed counter.

While denying the allegations mentioned in the petition, contended that due to rash and negligent driving of the bus driver coming in opposite direction, the accident has occurred and, therefore, sought to exonerate him.

6. The 2nd respondent – Insurer of the van, filed counter opposing the claim.

7. The 3rd respondent - Corporation also filed counter, denying the rash and negligent driving attributed to the driver of its bus, by the petitioners.

8. Based on the aforesaid pleadings, the Tribunal framed the following three issues about fixing responsibility for the accident:

- “1. Whether the death of deceased was caused in Motor Vehicle Accident by Allwyn Truck bearing No.A.P.27 T 4689 due to rash and negligent driving of its driver?
2. Whether the petitioners are entitled to claim for compensation? If so, to what extent and from whom?
3. To what relief? ”

9. During inquiry before the Tribunal, on behalf of the petitioners, petitioner No.1 examined herself as PW.1 and also examined one Jayampu Suseela as PW.2 and marked Exs.A-1 to A-8 as regards their entitlement for compensation. On behalf of the respondents, none was examined, but, however, copy of insurance policy was marked as Ex.B-1.

10. The Tribunal while dealing with the evidence elaborately, let in by the petitioners and referring to the skid marks of the bus, arrived at the conclusion that only due to rash and negligent driving of the driver of van, the accident has occurred, but did not agree with the petitioners that there was negligent driving on the part of the driver of the bus and, accordingly, finding was tendered.

11. On issue No.1, the Tribunal having found that the deceased was travelling in a goods vehicle as gratuitous passenger, exonerated the 2nd respondent – insurer by recording a definite finding thereon and so also the Tribunal exonerated the 3rd respondent in view of the finding tendered on issue No.1.

12. Heard Sri S. Chandra Sekhar, learned counsel for the

appellants and Sri R. Manmadha Reddy, learned Standing Counsel for respondent No.3 - Corporation. None appears for respondent Nos.1 and 2.

13. Perused the order and the evidence on record. The finding tendered by the Tribunal on issue No.1 holding that due to rash and negligent driving of the driver of van alone occasioned the accident is concerned, the said finding was based on appreciation of evidence through Exs.A-1, A-2, A-5 and A-6. The reasoning in reaching that finding on issue No.1 is well appreciated and well-considered and, therefore, there is no legal infirmity warranting interference by this Court. Hence, the finding is confirmed.

14. On issue No.2, the finding recorded by the Tribunal that the deceased was traveling as gratuitous passenger in Allwyn van bearing registration No.AP 27T 4689 and that the said van was a goods vehicle, can not also be disturbed, as there is no contra evidence let in by the petitioners to show that the van was not a goods vehicle. Admittedly, the deceased was travelling in that van to reach his school and not as owner of the goods. Therefore, the findings recorded by the Tribunal and the conclusion arrived at based on the said findings in dismissing the claim against respondent Nos.2 and 3 are confirmed. There is no merit in the appeal and, consequently, the appeal is liable to be dismissed, while confirming the order of the Tribunal as regards determination of compensation in so far as the 1st respondent is concerned.

15. Accordingly, the appeal is dismissed to the extent indicated above. There shall be no order as to costs.

16. As a sequel thereto, miscellaneous applications, if any,
pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

February 25, 2015.

Mgr