

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.2422 of 2009

JUDGMENT:

Challenging the Award dt:14.11.2007 in M.V.O.P. No.1004 of 1998 passed by the Chairman, M.A.C.T-cum-III Addl. District Judge (FTC), Mahabubnagar at Gadwal (for short 'the Tribunal'), the APSRTC preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The first claimant is the wife and claimants 2 to 4 are minor children of the deceased—G.Bheemudu. Their case is that on 04.01.1998, the deceased and some others were returning from Mahabubnagar to Atmakur in the jeep bearing No.APD 8064 and at midnight, when they reached Kothakota Shivar on N.H-7, the driver of the jeep stopped the vehicle on the left side of the road as the oil was exhausted and when he was checking the jeep and other inmates were sitting in the jeep, in the meanwhile the RTC bus bearing No.AP 10 Z 3951 belonging to Kadapa Depot, being driven by its driver at high speed and in a rash and negligent manner, dashed the jeep and thereby, the jeep turned turtle causing injuries to the inmates. The deceased ultimately succumbed to injuries. It is averred that the accident was occurred due to the fault of the bus driver and due to sudden demise of deceased, the claimants became destitutes. On these pleas they filed M.V.O.P.No.1004 of 1998 under Section 166 of Motor Vehicles Act, 1988 (for short "the Act") against respondent

—APSRTC and claimed Rs.5,00,000/- as compensation.

b) The respondent/APSRTC filed counter and denied all the material averments made in the claim petition and urged to put the claimants in strict proof of the same. It contended that the accident was occurred due to the wrong parking of the jeep bearing No.APD 8064 in which the deceased and others were there and hence, it is not liable to pay compensation.

c) During trial, PWs.1 and 2 were examined and Exs.A1 to A5 were marked on behalf of claimants. No oral or documentary evidence was adduced on behalf of respondent.

d) The Tribunal on appreciation of both oral and documentary evidence awarded Rs.3,30,656/- as compensation against respondent with proportionate costs and interest @ 7.5% p.a. under different heads as below:

Loss of dependency	Rs. 2,98,656-00
Funeral expenses	Rs. 2,000-00
Loss of consortium	Rs. 15,000-00
Loss of estate	Rs. 15,000-00

Total	Rs. 3,30,656-00

Hence, the appeal by APSRTC.

3) The parties in this appeal are referred as they were arrayed before the lower Tribunal.

4) Heard arguments of Sri Mayur Reddy, learned Standing Counsel for appellant/APSRTC and Sri Venkatesh Gupta,

learned counsel for respondents/ claimants.

5) Learned Standing Counsel for APSRTC/appellant challenged the award on two main grounds:

a) Firstly, that the bus driver was not responsible for the accident and on other hand, the jeep driver who parked the jeep in the midnight on the middle of the road without keeping parking lights on and stones around the vehicle was in fact responsible for the accident.

b) Secondly, on the ground that the compensation was excessive inasmuch as the claimants have not placed any cogent evidence regarding the employment of the deceased and in spite of it, the Tribunal going by Ex.A.5—alleged salary certificate fixed the compensation.

He thus prayed to allow the appeal and exonerate the appellant from the liability or alternatively to reduce the compensation suitably.

6) Per contra, learned counsel for respondents/claimants supported the award and prayed for dismissal of the appeal.

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

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

8) **POINT:** The accident, involvement of the jeep bearing

No.APD 8064 and bus bearing No.AP 10 Z 3951 and death of deceased are all admitted facts. As per the claimants, on the night of 04.01.1998, the deceased and some others were returning from Mahabubnagar to Atmakur in the jeep bearing No.APD 8064 and at midnight when they reached Kothakota Shivar on N.H-7, the driver of the jeep stopped the vehicle on the left side of the road as the oil was exhausted and when he was checking the jeep and other inmates were sitting in the jeep, in the meanwhile the offending bus belonging to Kadapa Depot, being driven by its driver at high speed and in a rash and negligent manner, dashed the jeep and thereby, the jeep turned turtle causing injuries to the inmates and the deceased ultimately succumbed to injuries. As per claimants, the accident was occurred due to the fault of the bus driver. To establish this fact, the claimants examined PW.2 who is one of the inmates of the jeep and who lodged FIR. PW.2 clearly narrated the method and manner of occurrence of the accident in his evidence. He avouched that the accident was occurred due to the fault of the bus driver. In the cross examination, he denied the suggestion that the jeep driver did not take precautions by placing stones around the vehicle and putting on the parking lights. PW2 being eye witness to the accident and not interested in either of the vehicle drivers, his evidence can be accepted. His evidence clearly shows that the bus driver was responsible for the accident as he drove his vehicle at high speed and in a rash and negligent manner and dashed behind the jeep. The appellant/corporation

has not adduced any evidence before the lower Tribunal. It did not examine its driver to establish his innocence and to prove the fault of the jeep driver if any. Therefore, the lower Tribunal rightly held that the bus driver was responsible for the accident. The contra argument cannot be accepted in the appeal.

9) Sofaras compensation is concerned, the Tribunal having regard to Ex.A.5—salary certificate issued by the office of Executive Engineer, P.J.P Dam Division, Mahabubnagar, held that the deceased was working as Attender in the said office and drawing a net monthly salary of Rs.2,996/- and accordingly, computed the compensation. It is true that the claimants have not examined the authority who issued the salary certificate in proof of the employment and salary of the deceased. However, as against the evidence of PW.1 to the effect that her husband was working as Attender in P.J.P, there was no cross examination by the appellant/ Corporation. So also there was no cross examination against Ex.A.5—salary certificate produced by PW.1. Therefore, the appellant now cannot harp that the claimants have not established the employment and salary of the deceased. The compensation awarded being just and reasonable, there is no need to revise the same. Hence, I find no merits in the appeal.

10) In the result, this M.A.C.M.A. is dismissed by confirming the award passed by the Tribunal in M.V.O.P. No.1004 of 1998.

a) Respondents in the OP are directed to deposit the compensation within two (2) months from the date

of this judgment, failing which execution can be taken out against them.

b) No costs in the appeal.

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

U. DURGA PRASAD RAO, J

Date: 03.11.2015

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