

THE HON'BLE SMT. JUSTICE ANIS

M.A.C.M.A. No. 872 OF 2005

-

JUDGMENT:

This appeal is filed by the appellants/respondents under Section 173 of the Motor Vehicles Act, 1988 (for short 'M.V.Act'), aggrieved by the award dated 04.11.2004, passed by the Motor Accident Claims Tribunal-cum-District Judge, Nellore, in O.P.No.34 of 2003, awarding compensation of Rs.9,03,018.22 Ps.

2. The claimant/A.P.S.R.T.C. filed the above O.P under Section 166 of the M.V.Act, claiming compensation of Rs.9,04,018.22 Ps. on account of the damages sustained to the bus bearing Registration No.AP9Z 5253 in a motor vehicle accident and the compensation paid to the injured persons and the family members of the deceased who died in the accident, which took place on 24.09.1996 at about 7.50 a.m. at Railway level crossing No.4 at K.M.No.16/2-3 near Vendodu Village, Gudur Mandal, Nellore District.

3. The brief averments made in the petition are that on 24.09.1996 at about 7.50 a.m. while the R.T.C. bus bearing registration No.AP9Z 5253 was proceeding from Vendodu to Gudur and when it reached an unmanned level crossing No.4 at K.M.No.16/2-3, the conductor gave a signal to cross the said level crossing and while the bus was crossing the said railway track, a train bearing No.7405 - Krishna Express proceeding from Tirupati to Secunderabad, came with high speed, without blowing horn and dashed the bus resulting in death and injuries to the inmates of the

bus and the bus was completely damaged beyond repairs. Therefore, the respondents are jointly and severally liable to pay compensation to the petitioner.

4. The brief averments made in the counter filed by the respondents are as follows:

The respondents put the petitioner to prove the manner of accident, damages caused to the bus and the compensation paid to the passengers in the bus. The respondents stated that a criminal case against the driver of the bus was registered for his gross negligence while crossing the unmanned level crossing gate and the respondents are not responsible for the said accident. Further, the train No.7405 - Krishna Express is not a vehicle as defined under Section 2(28) of the M.V.Act and the Union of India represented by the General Manager, South Central Railway, is not the owner of the vehicle as defined under Section 2(30) of the M.V.Act. Therefore, the petitioner is not entitled for any compensation under Section 161 of the Indian Railways Act, 1989. The respondents further stated that on 24.09.1996, Train No.7405 - Tirupati-Secunderabad Express left Vendodu Railway Station after a scheduled stop of 2 minutes i.e. 7-32 a.m. to 7.34 a.m. and was running at a speed of 70 KMPH at the time of approaching the unmanned level crossing gate No.4 at K.M.16/2-3 as against the permissible speed of 90 KMPH with whistle continuously from KM 16/B. It is further stated that there was no obstruction on the level crossing since the track is situated on a straight and visible alignment and when the train was approaching the said unmanned level crossing, the R.T.C. bus suddenly entered the level crossing from left to right and stopped on the track violating the M.V.Act and also the Indian Railways Act, 1989, as a consequence, the train hit the bus in a

broad day light resulting in death and injuries to the passengers of the bus. It is also stated that some of the villagers of Vendodu reported that the bus was having starting trouble while leaving their village on the fateful day and since there was a starting trouble, the bus was physically pushed by some men to start it. It is further stated that the driver of the bus did not stop the bus at the Stop Board of unmanned level crossing No.4 to allow the conductor to alight and see both sides of the track in order to ensure that the way was clear and no train was approaching, as contemplated under Section 161 of the Indian Railways Act, 1989. It is further contended that a departmental enquiry was conducted by a Committee of Senior Scale Officers of Indian Railways and the Committee finding reveals that the driver of the bus was solely responsible for the mishap. It is further contended that the driver of the bus without following the rules in a rash and negligent manner drove the bus to lead the mishap, for which the petitioner alone is responsible vicariously for the act committed by their servants. It is further contended that the working of the Railways are governed by the provisions of the Indian Railways Act, 1989 and the general Act will not be applicable in deciding the liability and hence, the M.V. Act has no application to decide the liability of the railway administration if any. Lastly, it is contended that the claim of the petitioner is not maintainable and the respondents are not having the duty to pay any compensation, and prayed the Court, to dismiss the petition with costs.

5. Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim, the petitioner examined PWs 1 to 4 and got marked Exs.A.1 to A.28. On behalf of the respondents, RW1 was examined and no documents were marked.

6. After considering the oral and documentary evidence, the Tribunal, while deciding the issue No.1, observed as follows:

“Much evidence has been adduced throwing blame on each other. Irrespective of the blame on each party, the case on hand indicates that number of persons died in view of the accident. The petitioner-Corporation was made to pay compensation to the kith and kin of the deceased and the injured persons. The Corporation sustained loss since the bus was completely damaged. Had this level crossing would be a manned level crossing, definitely there could be barricades preventing the bus from proceeding and crossing the level crossing. If really there is man level crossing, there is no necessary for the driver to see the rail traffic and there will not be any opportunity for the driver to cross the tracks and there would not be any chance for capcization of the bus on the tracks. Since it is an unmanned level crossing, it made the driver to drive the bus without stopping.”

The Tribunal decided the said issue in favour of the petitioner and granted compensation of Rs.9,03,018.22 Ps. to the petitioner along with interest at 9% per annum.

7. Aggrieved by the order passed by the Tribunal, the respondents preferred the present appeal.

8. The learned counsel for the appellants/respondents argued that due to contributory negligence of the driver of the train engine and the bus, the accident occurred, and therefore, it is the joint liability and railways alone are not entitled to pay the entire compensation. It is also argued that there is no fault on the part of the driver of the railway engine since there are no restrictions placed against him while driving the train on the track and the accident occurred due to the composite negligence of the railways as well as the bus driver of the petitioner. It is further argued that it is the duty of the driver of the bus to stop the vehicle, watch and

cross the track. It is further argued that the train cannot take any deviation or apply sudden brakes, and finally, prayed the Court to allow the appeal.

9. On the other hand, the learned counsel for the respondent/petitioner argued that railways are responsible for payment of compensation as both the vehicles were in motion at the time of accident and due to the accident, many persons died and received injuries. It is also argued that the railways should have taken much care to get the unmanned level crossing to the manned level crossing. It is further argued that previously it was the manned level crossing and later on it was changed into an unmanned level crossing. It is further argued that if really, the railways, by engaging the lineman or a gangman or regulating the train traffic and road traffic, the accident could not have occurred and the Tribunal rightly awarded the compensation against the appellants and the said finding needs no interference, and finally, prayed the Court to dismiss the appeal.

10. Having regard to the submissions made by both the learned counsel, the only point that arises for consideration is:

Whether the appellants/respondents have made out any case to set aside the award passed by the Tribunal?

11. **Point:**

A perusal of the record shows that on 24.09.1996 at about 7.50 a.m., one R.T.C. bus bearing registration No.AP9Z 5253 was proceeding from Vendodu to Gudur and when the bus reached the unmanned level crossing No.4 at K.M.No.16/2-3 and was crossing the railway track, the accident occurred as the train bearing No.7405 - Krishna Express came with high speed while proceeding

from Tirupati to Secunderabad and dashed against the bus, due to which many persons died and received injuries. The passengers, who travelled in the bus and who received injuries, categorically stated the said fact.

12. In this case, both the appellants and the respondent are throwing the blame on each other regarding the manner of accident and their liability to pay compensation. On the date of accident, both the vehicles were in motion and the mishap took place resulting in the death of many persons and some other persons received injuries. The driver of the bus failed to notice that a train was coming at that relevant point of time. However, at the same time, railways should have taken much care by engaging a lineman or a gangman for regulating the train traffic and road traffic at the place of accident.

13. Admittedly, the accident occurred when the bus reached the unmanned level crossing No.4 at K.M.No.16/2-3, it was hit by a train bearing No.7405 - Krishna Express. As rightly contended by the learned counsel for the appellants that the driver of the train does not have any restrictions while operating the engine on the tracks, but at the same time, the Tribunal rightly held that the driver should have given a whistle while it was going on the track at the unmanned level crossing. The respondent/petitioner filed Ex.A.27 photographs which show that number of buses were plying through that unmanned level crossing. Therefore, the contention of the railways that the traffic was poor at the said unmanned level crossing, cannot be accepted. Therefore, the Tribunal considering this fact, rightly held that it is the primary responsibility of the railways to make the level crossing as a manned level crossing instead of unmanned level crossing and

fixed the strict liability on the railways to pay compensation. Therefore, the said finding of the Tribunal about the liability of the railways for payment of compensation, needs no interference.

14. Admittedly, the appellants have not disputed about the quantum of compensation awarded by the Tribunal. Therefore, the finding of the Tribunal awarding compensation of Rs.9,03,018-22 Ps. along with interest at 9%, needs no interference.

15. Accordingly, the appeal is dismissed. No order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

(ANIS, J)

11.09.2015
Anr

THE HON'BLE SMT. JUSTICE ANIS

-

M.A.C.M.A. No. 872 OF 2005

11.09.2015

Anr