

**THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO**

**M.A.C.M.A. No.1298 of 2009**

**JUDGMENT:**

Aggrieved by the Award dated 06.10.2006 in O.P.No.971 of 2004 passed by the Chairman, M.A.C.T-cum-I Addl. District Judge, West Godavari District at Eluru, (for short 'the Tribunal'), the respondent-APSRTC preferred the instant MACMA.

2) The factual matrix of the case is thus:

a) On 30.08.2004 afternoon, while the deceased was proceeding on the scooter bearing No. AP 37 N 9314 along with friend—Ambati Satyanarayana and when they reached near H.P. Petrol Bunk on Palakole road in Narsapur Village at about 4.45 PM, the 1<sup>st</sup> respondent, APSRTC Bus bearing No.AP 9 Z 9790 being driven by its driver in a rash and negligent manner dashed against the scooter of the deceased. As a result, the deceased and his friend fell down on the road and sustained grievous injuries. Immediately they were shifted to Government Hospital, Narasapur for treatment where the deceased succumbed to injuries. It is averred that accident occurred due to rash and negligent driving by the 1<sup>st</sup> respondent. On these pleas, the claimants, who are wife, son and parents of deceased, filed O.P.No.971 of 2004 under Section 166 of Motor Vehicles Act, 1988 (for short "the Act") and claimed Rs.6,00,000/- against Respondent Nos. 1 and 2, who are driver and APSRTC.

b) The Respondents filed Counter denying all the material averments and urged to put the claimants in strict proof. R2 contended that in order to overtake a private bus the deceased went in high speed and fell down on the road and sustained injuries and there was no collision between the two vehicles. R2 further contended there was no negligence on the part of 1<sup>st</sup> respondent-driver and the deceased himself was responsible for the accident.

c) During trial, PWs.1 to 3 were examined and Exs.A1 to A4 were

marked on behalf of claimants. On behalf of respondents, RW.1 was examined and no documents were marked.

d) On appreciation of both oral and documentary evidence, the Tribunal awarded total compensation of Rs.4,17,500/- with costs and interest at 7 1/2% p.a under different heads as follows:

Loss of dependency Rs. 4,08,000-00

Loss of estate Rs. 2,500-00

Loss of consortium Rs. 5,000-00

Funeral expenses Rs. 2,000-00

-----

Total Rs. 4,17,500-00

-----

Hence, the appeal by the APSRTC.

3) The parties in the appeal are referred as they stood before the Tribunal.

4) Heard arguments of Sri A. Chandraiah Naidu, learned counsel for the appellant/APSRTC and Sri C.Prakash Reddy, learned counsel for respondents/claimants. R.5 is not a necessary party vide cause title.

5 a) Challenging the Award, the learned counsel for appellant-APSRTC, firstly argued that the Tribunal grossly erred in holding that the driver of APSRTC was responsible for the accident inspite of the clear evidence of RW.1 who is the driver of the bus to the effect that the deceased while overtaking his front bus, drove the scooter in a rash manner and fell down on the road and sustained injuries and died and the offending bus did not even touch his scooter. He argued that the Tribunal ought to have believed the evidence of RW.1 in preference to the evidence of PW.3, who was not shown as an eye witness in the charge sheet. On this argument, he sought to exonerate the APSRTC from the liability.

b) Secondly, learned counsel argued that the Tribunal erred in fixing the income of the deceased as Rs.3,000/- per month, despite the fact that PW.2, who is said to be employer of the deceased, failed to produce any authentic record regarding the payment of salary. He contended that the Tribunal ought to have treated the deceased as non-earning person and fixed his notional income as Rs.15,000/- per annum following the II Schedule of the M.V.Act. In view of the error committed by the Tribunal, the compensation was unduly escalated.

c) Thirdly, he argued that the Tribunal erred in accepting '17' as multiplier. He submitted that as per the multiplier table provided by the Hon'ble Apex Court in the case of **Smt. Sarla Varma vs. Delhi Transport Corporation**, the appropriate multiplier for the persons in the age group of 31-35 years is '16'. He thus at the first instance, prayed for dismissal of the claim petition and alternatively, for re-assessment of the compensation.

6 a) *Per contra*, while opposing the appeal, the learned counsel for respondents/claimants argued that the accident was occurred purely due to rash and negligent driving by the RW.1, who was the driver of the offending bus, and this fact was amply established through the evidence of PW.3 and Ex.A.4-charge sheet. He argued that PW.3 is an independent witness, whereas Rw.1 is an interested witnesses and therefore, the Tribunal rightly believed the evidence of PW.3 in preference to RW.1.

b) Secondly, he argued that though the deceased was earning Rs.5000/- per month as deposed by PW.2, the Tribunal took a moderate amount of Rs.3,000/- and assessed the compensation and therefore, the Award cannot be found fault with. He, thus, prayed for dismissal of the Petition.

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

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

8) **POINT:** The first point of argument raised by the appellant is that the crime bus did not touch the deceased and on the other hand, while overtaking his front bus, the deceased drove his scooter in a rash manner and fell down and suffered injuries and died. RW.1 being the driver of the offending bus deposed this fact. He claimed that in the resultant criminal case, he was acquitted by the concerned Magistrate Court. Per contra, PW.3, who claims as an eye witness, deposed that the accident was occurred due to the fault of the bus driver as he drove the vehicle in a rash and negligent manner and dashed the scooter, which was proceeding on the extreme left side of the road. The evidence of PW.3 is concerned, except suggesting in the cross examination that he did not witness the accident and he was deposing falsehood to help the petitioners, the appellant/APSRTC did not extract any fact showing the relationship between the claimants and PW.3. So, PW.3 can be held as an independent witness and therefore, there is no compelling reason to discard his evidence. Per contra, as rightly argued by the claimants, Rw.1 is an interested witness since he is the driver of the appellant Corporation. Hence, being the driver of the crime vehicle, he would try to disown his liability. Therefore, his evidence cannot be accepted as gospel truth. Further, as rightly observed by the Tribunal, RW.1 did not produce the certified copy of the Judgment of the Magistrate Court, as per which he was allegedly acquitted in the connected Criminal case. So, for all these reasons, it can be held that the accident was occurred due to the fault of the bus driver alone.

9) So far as the second argument is concerned, PW.2 deposed that he owns Ac.10 of fish pond in Sakinetipalli village and both the deceased were working as Supervisors of his fish ponds and he was paying Rs.5000/- to each of them. However, the Tribunal did not accept the evidence of PW.2, but fixed the earnings of the deceased at a moderate figure of Rs.3,000/- per month and computed the compensation. Having regard to the fact that the deceased was an Youngman of 34 years, it can be said that he would earn that much amount per month had he alive. Hence, the said amount cannot be

termed as an exorbitant figure.

10) So far as the multiplier is concerned, having regard to the age of the deceased as 34 years, the Tribunal accepted '17' as multiplier. No doubt, as per multiplier table provided in **Sarla Varma's** case (1 supra), '16' is the multiplier for the persons in the age group of 31-35 years. It must be noted that by the date of Award in the instant case which was pronounced on 06.10.2006, the Judgment in **Sarla Varma's** case (1 supra), was not rendered by Hon'ble Apex Court and therefore, the Tribunal following the Second Schedule of the M.V.Act, selected '17' as multiplier. Due to this and the difference being one digit, this Court is not inclined to reduce the multiplier to the disadvantage of the claimants. So, at the outset, the Award passed by the Tribunal cannot be said to be arbitrary.

11) In the result, the MACMA is dismissed by confirming the Award passed by the Tribunal in O.P.No.971 of 2004. No order as to costs.

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

---

**U. DURGA PRASAD RAO, J**

Date: 31.03.2015

Note: L.R Copy to be marked: Yes / No

eha