

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A.No.232 OF 2013

JUDGMENT:

This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (the Act) challenging the judgment and award dated 11.3.2011 passed in M.V.O.P.No.496 of 2007 on the file of the Chairman, Motor Vehicle Accident Claims Tribunal-cum-IV Additional District Judge, Tirupati, wherein and whereby an amount of Rs.10,62,852/- was awarded as against the claim of Rs.14,00,000/-.

2. The parties to this appeal will hereinafter be referred to as they are arrayed before the Tribunal, to avoid confusion.

3. The facts leading to filing of the appeal are briefly as follows: On 19.12.2006, at about 06.15 a.m., P.Koti was proceeding on his motor cycle bearing No.AP 03S 1559 along with one A.Venkateswarlu (pillion rider), from Srikalahasthi to their village Kapugunneru. When they reached near Thondamanadu Arch, Cherlopalle village of Srikalahasthi Rural Mandal, the driver of Andhra Pradesh Road Transport Corporation (RTC) bus bearing No.AP 10Z 7606 had driven the same in a rash and negligent manner and dashed the motor cycle. In the said accident, P.Koti (hereinafter referred to as, the deceased) and A.Venkateswarlu sustained grievous injuries and died on the spot. The accident occurred due to the rash and negligent driving of the driver of the RTC bus against whom the Station House Officer, Srikalahasthi Rural Police Station registered a case in Crime No.118 of 2006 under Section 304A IPC. The first petitioner is the wife, second petitioner is minor son, and petitioner Nos.3 and 4 are parents of the deceased. By the time of the accident, the deceased was aged about 25 years and earning Rs.6,000/- per month as Lift Operator in Lakshmi Balaji Bottling Pvt. Ltd. Hence, the petition under Section 166(1) of the Act claiming a compensation of Rs.14,00,000/- from the respondent

with interest and costs.

4. The respondent filed counter denying all the averments made in the petition including the manner of the accident, age and income of the deceased, *inter alia*, contending that the deceased had driven the motor cycle in zigzag manner due to which he fell down from the motor cycle and sustained injuries. In fact, the motor cycle of the deceased touched the right side bumper of the stationed bus. The accident occurred due to rash and negligent driving of the motor cycle by the deceased and there was no negligence on the part of the driver of the RTC bus. The amount of compensation claimed by the petitioner is highly excessive and exorbitant. Hence, the petition may be dismissed.

5. Basing on the above pleadings, the Tribunal framed the following issues:

1. Whether the deceased P.Koti, husband of first petitioner, died in a motor vehicle accident that took place on 19.12.2006 at about 6.15 AM near Thondamanadu Arch, Cherlopalle village of Srilakahasti Mandal on Srikalahasti – Tirupati main road due to rash and negligent driving of the driver of the APSRTC Bus bearing Regn. No.AP 10Z 7606 belonging to the respondent corporation?
2. Whether the petitioners are entitled for compensation? If so, to what amount and from whom?
3. To what relief?

6. During the course of trial, on behalf of the petitioners, P.Ws.1 to 3 were examined and Exs.A1 to A6 and X1 were marked. On behalf of the respondent, no oral or documentary evidence was adduced.

7. On appraising the oral, documentary evidence and other material available on record, the Tribunal arrived at the conclusion that the accident occurred due to the rash and negligent driving of the driver of RTC bus, which resulted in death of the deceased, and awarded an

amount of Rs.10,62,852/- towards compensation. Feeling aggrieved by the judgment and award of the Tribunal, the respondent – Corporation preferred the present appeal.

8. The contention of the learned counsel for the respondent is three fold:

1. the Tribunal failed to consider that at the time of the accident, the deceased had driven the motor cycle in a rash and negligent manner, fell down and died on the spot;
2. the Tribunal failed to consider that Ex.A1 (F.I.R.) was lodged at the instance of the petitioners; and
3. the amount of compensation awarded by the Tribunal is on higher side.

Per contra, learned counsel for the petitioners submitted that the respondent has not adduced oral or documentary evidence to demolish the stand of the petitioners. He further submitted that the Tribunal, after considering the oral testimony of P.W.1 and Exs.A1, A2 and A5 (certified copies of F.I.R., charge sheet and M.V.I. report respectively), arrived at the conclusion that the accident occurred due to the rash and negligent driving of the driver of RTC bus. He also submitted that the Tribunal has awarded just and reasonable compensation; therefore, there are no grounds to interfere with the well considered judgment and award of the Tribunal.

9. 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 motor cycle by the deceased?
2. Whether the Tribunal has awarded reasonable compensation or not?

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Point No.1:

10. To substantiate the case, first petitioner examined herself as P.W.1 and got marked Exs.A1 to A6. P.W.2 is the eye witness to the accident. No oral or documentary evidence was let in by the

respondent. A careful perusal of the testimony of P.W.1 reveals that she is not eye witness to the accident; therefore, her testimony is no way helpful to prove the manner of the accident. The oral testimony of P.W.1 coupled with the recitals of Ex.A3 (inquest report) and Ex.A4 (post mortem certificate) clearly reveal that the deceased died in the road accident that occurred on 19.12.2006 near Thondamanadu arch, Cherlopalli village of Srikalahasti Rural Mandal. As per the testimony of P.W.2, the driver of the RTC bus had driven the same in a rash and negligent manner and dashed against the motor cycle of the deceased. In the cross-examination of P.W.2, nothing was elicited to shake his testimony so far as the manner of the accident is concerned. As per the recitals of Exs.A1 and A2 (F.I.R and charge sheet respectively), the accident occurred due to the rash and negligent driving of the driver of the RTC bus. The case of the respondent is that by the time of the accident, the deceased himself had driven the motor cycle in a zigzag manner and thereby fell down from the motor cycle and died on the spot. Mere taking up the plea in the counter by itself would not amount to proof of the stand taken by the respondent. If really the accident occurred as pleaded by the respondent in the counter, what prevented the driver of the RTC bus to lodge a complaint to the concerned Police. The respondent has not taken any steps to examine the driver of the RTC bus at the time of the accident, or any other eye witness to the accident, to substantiate the stand taken by it. As observed earlier, the oral testimony of P.W.2 is cogent and convincing, and it is supported by the recitals of Exs.A1, A2 and A5 (certified copies of First Information Report, charge sheet and Motor Vehicle Inspector's report respectively). No rebuttal evidence was adduced by the respondent to demolish the stand taken by the petitioners. The Tribunal has considered the oral and documentary evidence available on record in right perspective and arrived at the conclusion that the accident occurred due to the rash and negligent

driving of the driver of the RTC bus. I am fully agreeing with the finding recorded by the Tribunal on issue No.1. There are no grounds much less valid grounds to upset the said finding of the Tribunal. Accordingly, the point No.1 is answered in favour of the petitioners and against the respondent.

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Point No.2:

11. As per the testimony of P.W.1, her husband used to earn Rs.6,500/- per month by working as Lift Operator in Lakshmi Balaji Bottling Pvt. Ltd. To prove the income of the deceased, the petitioners mainly relied on the oral testimony of P.W.3, the Executive Director of Lakshmi Balaji Bottling Pvt. Ltd., and Ex.A6 salary certificate of the deceased (Ex.X1). As per the testimony of P.W.3, by the time of the accident, the deceased was working as Lift Operator and drawing a salary of Rs.6,750/- per month. In the cross-examination of P.W.3, nothing was elicited to shake his testimony. By examining P.W.3 and marking Ex.A6 (salary certificate), the petitioners proved the income of the deceased. The Tribunal has taken the monthly income of the deceased as Rs.4,500/- per month. The Tribunal, by adding 50% towards future prospects, and deducting 1/4th towards personal expenses of the deceased, determined the contribution of the deceased to the family as Rs.5,063/-. Taking into consideration the age of the deceased, the Tribunal adopted appropriate multiplier as '17' and awarded (Rs.5,063 X 12 X 17=) Rs.10,32,852/- towards loss of dependency. The Tribunal also awarded Rs.5,000/- towards loss of estate, Rs.5,000/- towards funeral expenses and Rs.20,000/- to the first petitioner-widow of the deceased towards loss of consortium. The total compensation of Rs.10,62,852/- awarded by the Tribunal is just and reasonable. Viewed from any angle, I am unable to accede to the

contention of the learned counsel for the respondent that the quantum of compensation awarded by the Tribunal is on higher side. There are no grounds much less valid grounds to set aside the well considered judgment and award of the Tribunal granting a compensation of Rs.10,62,852/-. The appeal lacks merits and *bona fides*. Accordingly, the point No.2 is answered.

12. In the result, the appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 04.09.2015.

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