

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.831 OF 2009

JUDGMENT:

_____ This appeal is preferred by the appellants/respondents assailing the judgment and award, dated 13.02.2008 passed in O.P.No.1690 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Nizamabad (for short, 'the Tribunal').

2. _____ For the sake of convenience, the parties are hereinafter referred to as they are arrayed in the O.P. before the Tribunal.

3. _____ The facts leading to filing of the present appeal are, briefly, as follows: On 26.03.2002 at about 9:15 PM, Yergikar Manohar @ Suvarnakar Manohar (hereinafter referred to as 'the deceased') was waiting at Banswada in order to go to Birkur Village. In the meanwhile, the driver of the A.P.S.R.T.C. Bus bearing No.AP-10Z-1379 had driven the same in a rash and negligent manner and hit the deceased. Immediately after the accident, the deceased was shifted to Government Hospital, Banswada where he succumbed to injuries on the same day. The accident occurred due to the rash and negligent driving of the driver of the RTC bus against whom the Station House Officer, Banswada registered a case in Crime No.370 of 2002 for the offence punishable under Section 304-A I.P.C. By the time of death, the deceased was aged about 44 years and used to earn Rs.15,000/- per month as a gold smith as well as in a paddy business. The petitioners are dependants on the income of the deceased. Therefore, the petition is filed claiming compensation of Rs.12,00,000/-. Respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioners.

4. _____ The respondents filed written statement denying all the averments made in the petition *inter alia* contending that there was no rashness or negligence on the part of the driver of the RTC bus to

cause the accident. The petitioners are not the legal heirs of the deceased. The amount of compensation claimed by the petitioners under various heads 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 motor vehicle accident occurred due to rash and negligent driving of the APSRTC bus bearing No. AP 10Z-1379 by its driver resulting in death of the deceased?
- (2) Whether the petitioners are entitled to compensation? If so, to what amount and against which of the respondents?
- (3) To what relief?

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6. During the course of trial, on behalf of the petitioners, P.Ws.1 and 2 were examined and Exs.A.1 to A.5 were marked. On behalf of the respondents, RW.1 was examined and no documents were marked.

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7. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the RTC bus which resulted in the death of the deceased and allowed the petition in part by awarding compensation of Rs.8,00,000/-.

8. Feeling aggrieved by the judgment and award of the Tribunal, the respondents filed the present appeal.

9. Heard Sri N.Vasudeva Reddy, the learned Standing Counsel for the respondent – Corporation and Sri Lakkadi Dayakar Reddy, the learned counsel for the petitioners.

10. The contention of the learned Standing Counsel for the respondents is two fold: (1) The Tribunal has not rightly considered the oral testimony of RW.1 and therefore, the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of the RTC bus is not sustainable, and (2) The compensation

awarded by the Tribunal is on higher side.

11. Per contra, the learned counsel for the petitioners submitted that the Tribunal rightly considered the oral testimony of RW.1 and arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the RTC bus. He further submitted that the amount of compensation awarded under various heads is fair, just and reasonable.

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12. Now the points that arise for consideration in this appeal are:

1. Whether there was any negligence on the part of the deceased to cause the accident? If so, to what extent?

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2. Whether the Tribunal has awarded just and reasonable compensation to the petitioners or not?

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13. **Point No.1:**

To prove the manner of the accident, petitioner No.1 herself examined as PW.1 and got marked Exs.A.1 to A.5. PW.2 is an eye witness to the accident. To demolish the case of the petitioners, the Conductor of the RTC bus examined himself as RW.1. As per the testimony of PWs.1 and 2, the accident occurred due to the rash and negligent driving of the driver of the RTC bus. PW.1 is not an eye witness to the accident. Therefore, her testimony is no way helpful to the petitioners to prove the manner of the accident. P.W.2 is an eye witness to the accident. In the cross-examination of P.W.2, nothing is elicited to shake his testimony so far as the negligence on the part of the driver of the bus is concerned. As per the testimony of RW.1, the deceased made an attempt to enter into the bus from rear gate of the bus and fell down. If the testimony of RW.1 is taken into consideration, the accident occurred due to the negligent act of the deceased. As per the recitals of Exs.A.1 – F.I.R. and A.2 – charge sheet, the accident occurred due to the rash and negligent driving of the driver of the RTC bus. As per the recitals of Exs.A.3 – inquest panchanama and A.4 – post-mortem report, the deceased died due to injuries sustained in a

road accident. A perusal of Ex.A.5 – M.V.I. report reveals that there was no mechanical defect in the bus. In the cross-examination of PW.1, nothing is elicited to shake her testimony. RW.1 being an employee of the respondent – Corporation, the possibility of distortion of the facts in order to avoid payment of compensation to the petitioners cannot be ruled out completely. In the cross-examination, RW.1 in unequivocal terms deposed that Police registered a criminal case against the driver of the RTC bus. If really the accident occurred due to the negligent act of the deceased, what prevented the RW.1 or the driver of the RTC bus from lodging a complaint to the police? If the driver of the RTC bus abstains himself from entering into the witness box, the Tribunal can draw an adverse inference. Whatever deposed by PWs.1 and 2 is fully supported by the recitals of Ex.A.1 and A.2. The oral testimony of RW.1 is not supported by any documentary evidence. The Tribunal, after considering the material available on record, arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the RTC bus. The finding of the Tribunal is fully supported by oral and documentary evidence. Hence, there are no grounds much less valid grounds to set aside the finding of the Tribunal on issue No.1.

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Having regard to the facts and circumstances of the case, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the RTC bus which resulted in the death of the deceased.

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14. POINT No.2:

As per Ex.A.4 – Post-mortem report, the deceased was aged about 48 years. The Tribunal has applied the multiplier as '13'. As per the testimony of PWs.1 and 2, the deceased was a gold-smith by profession. Except the self-served testimony of PW.1, there is no other convincing evidence to prove the avocation and income of the

deceased. The Tribunal has taken the income of the deceased as Rs.250/- per day. The Tribunal or the Court has to take into consideration the profession as well as the income of the deceased in order to determine the loss of dependency. In order to claim more compensation, the possibility of distortion of the facts by the petitioners cannot be ruled out completely. As per the recitals of Ex.A.3 – inquest panchanama, the deceased was a gold-smith by profession. The accident occurred in the year 2002. The Tribunal has to take into consideration the earning capacity of the individuals in that particular area in the absence of documentary evidence. In the absence of documentary evidence, some guess work is inevitable to determine the income of the deceased. The finding of the Tribunal that the deceased may earn Rs.250/- per day is not maintainable viewed from any angle. The petitioners have not proved the exact income of the deceased. The earning capacity of a gold-smith depends upon the various factors like place of work etc. The petitioners have not adduced any evidence to establish that the deceased having a shop in Banswada or in any town of Nizamabad District. The fact remains that a gold-smith is a skilled worker. Having regard to the facts and circumstances of the case, I am of the considered view that the deceased may earn Rs.6,000/- per month on average and not Rs.7,500/-. The Tribunal deducted 1/3rd towards personal expenses of the deceased. In the instant case, the petitioners are five in number and therefore, deduction of 1/4 is reasonable. The deceased may contribute Rs.4,500/- per month to his family members. The loss of dependency comes to Rs.7,02,000/- (4500 X 12 X 13). The compensation awarded by the Tribunal under the other heads is just and reasonable. Thus, the amount of compensation to which the petitioners are entitled to under various heads is as follows:

<u>01.</u>	<u>Loss of dependency</u>	<u>Rs.7,02,000/-</u>	-
<u>02.</u>	<u>Funeral expenses</u>	<u>Rs. 5,000/-</u>	_____
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03.	<u>Loss of consortium</u>	<u>Rs. 15,000/-</u>
-	<u>Total:</u>	<u>Rs.7,22,000/-</u>

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The petitioners are entitled for compensation in the following manner:

01.	<u>Petitioner No.1</u>	<u>Rs.3,22,000/-</u>
02.	<u>Petitioner No.2</u>	<u>Rs.1,60,000/-</u>
03.	<u>Petitioner No.3</u>	<u>Rs. 80,000/-</u>
04.	<u>Petitioner No.4</u>	<u>Rs. 80,000/-</u>
05.	<u>Petitioner No.5</u>	<u>Rs. 80,000/-</u>

15. In the result, the Appeal is allowed reducing the quantum of compensation from Rs.8,00,000/- to Rs.7,22,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The respondents are jointly and severally liable to pay the compensation to the petitioners. There shall be no order as to costs.

16. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 02.03.2015

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