

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.1097 OF 2009

JUDGMENT:

This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 by the appellant/respondent No.2 - Corporation challenging the judgment and award, dated 22.12.2008, passed in M.V.O.P.No.287 of 2006 on the file of the Motor Accidents Claims Tribunal-cum-II Additional District Judge, East Godavari at Amalapuram (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 20.01.2006, Gurralla Pullayya was returning to his house from the office on a motorcycle on the left side of the road. When he reached near Musalamma temple of Sivakodu Village, the driver of the R.T.C. Bus bearing No.AP 10 Z 3139 had driven the same in a rash and negligent manner and dashed against the motorcycle. The accident occurred due to the rash and negligent driving of the driver of the bus, against whom the Station House Officer, Razole Police Station registered a case in Crime No.13 of 2006 for the offence punishable under Section 304-A I.P.C. Due to injuries, Pullayya (hereinafter referred to as 'the deceased') died on 31.01.2006. By the time of accident, the deceased was aged about 52 years and used to earn Rs.15,000/- per month as Line Inspector, Telephone Exchange, P.Gannavaram. The petitioners are dependants on the income of the deceased. Respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.15,00,000/- to the petitioners.

4. Respondent No.1 remained *ex-parte*. Respondent No.2 filed counter denying all the averments made in the petition *inter alia* contending that the accident occurred due to the rash and negligent driving of the motorcycle by the deceased and there was no negligence on the part of the driver of the bus. In spite of the care taken by the driver of the bus, the deceased drove the motorcycle at high speed and dashed against the bus. 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 deceased died due to rash and negligent driving of vehicle i.e., APSRTC Bus bearing No. AP10Z 3139 by its driver 1st respondent?
- (2) Whether the petitioners are entitled to any damages, if so, to what amount and against 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.A.1 to A.14 were marked. On behalf of the contesting respondent, RW.1 was examined and no documents were marked.

7. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the driver of the bus and the deceased were equally responsible to cause the accident and allowed the petition in part by awarding compensation of Rs.3,13,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

8. Feeling aggrieved by the judgment and award of the Tribunal, respondent No.2 - Corporation preferred the present appeal.

9. Heard Sri S.V.Ramana, the learned Standing Counsel for respondent No.2 - Corporation and Sri J.Bhaskara Rao, the learned counsel for the petitioners (respondent Nos.1 to 5).

10. The contention of learned Standing Counsel for respondent No.2 – Corporation is two fold: (1) The accident occurred due to the negligence of the deceased and that aspect was not rightly considered by the Tribunal, and (2) The amount of compensation awarded by the Tribunal under various heads is highly excessive and exorbitant.

11. Per contra, the learned counsel for the petitioners submitted that the Tribunal has assigned cogent and valid reasons to its findings. He further submitted that there are no grounds much less valid grounds to interfere with the judgment and award of the Tribunal.

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

1. Whether the accident occurred due to the negligence of the deceased only or not?
2. Whether the amount of compensation awarded by the Tribunal is on higher side or not?

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POINT No.1:

13. In order to prove the manner of the accident, petitioner No.1 herself was examined as PW.1 and got marked Exs.A.1, A.2 and A.5. The testimony of PW.1 is no way helpful to prove the manner of accident as she is not an eye witness to the accident. As per the testimony of PW.2, the accident occurred due to the negligence of the bus driver. As per the testimony of RW.1 (respondent No.1), the accident occurred due to the negligence on the part of the deceased only. In the cross-examination, RW.1 admitted that Police investigated into the matter and filed charge sheet against him. As per the testimony of RW.1, the deceased himself drove the motorcycle in a rash and negligent manner and dashed against the bus. The material available on record clinchingly establishes that it is a case of head on collision. In case of head on collision, there is every possibility for negligence on the part of the both vehicle drivers. After scrutinizing the oral and documentary evidence, the Tribunal arrived at a conclusion that the accident occurred due to the negligence on the part of driver of the bus as well as the deceased. The Tribunal has assigned cogent and valid reasons to its findings. The finding of the Tribunal on issue No.1 became final so far as petitioners are concerned in view of non-filing of appeal or cross objections by the claimants. The oral and documentary evidence available on record clinchingly establishes that the accident occurred due to negligence on the part of the driver of the bus as well as the deceased. Having regard to the facts and circumstances of the case, I am of the considered view that the deceased as well as the driver of the bus were equally responsible to cause the accident. In the light of the foregoing discussion, I am unable to accede to the contention of the learned

Standing Counsel for respondent No.2 that the accident occurred due to the negligence of the deceased only.

POINT No.2

14. A perusal of the record reveals that the gross salary of the deceased was Rs.11,969/- by the time of accident. The Tribunal has taken the income of the deceased as Rs.11,484/- after deducting the Professional Tax etc. The Tribunal has rightly applied the multiplier '7'. The Tribunal has awarded an amount of Rs.6,16,000/- under different heads. The material available on record clinchingly establishes that the Tribunal has awarded just and reasonable compensation to the petitioners. Hence, there are no grounds much less valid grounds to interfere with the well considered judgment and award passed by the Tribunal.

15. In the result, the Appeal is dismissed. 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: 31.03.2015

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