

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.2447 of 2009

JUDGMENT:

Challenging the Award dated 01.02.2008 in M.V.O.P.No.428 of 2006 passed by the Chairman, M.A.C.T-cum-III Additional District Judge, Tirupati (for short “Tribunal”), the 2nd respondent in OP/National Insurance Company Limited, preferred the instant MACMA.

2 a) On factual side, on 10.12.2005, when the deceased —P.S.Vasanth, along with her son and daughter was travelling in APSRTC bus bearing No. AP 11 Z 629 and when it reached Subba Naidu Kandriga Cross Road at about 12:00 noon, a Milk van bearing No.TN 20 T 9793 came in opposite direction and both vehicles collided each other due to rash and negligent driving by the drivers of both the vehicles. In the resultant accident, the deceased, her son and daughter died on the spot. It is averred that the accident was occurred due to the negligence of drivers of both the vehicles and due to abrupt death of deceased, the claimant lost future hopes on his wife. With these averments, the husband of the deceased filed M.V.O.P.No.428 of 2006 under Sec.163-A of Motor Vehicles Act, 1988 (for short “M.V.Act”) against respondents 1 to 3, who are owner, insurer of the Milk Van and owner of APSRTC bus and claimed Rs.4,50,000/- as compensation under different heads. It may be noted that for the death of his son—P.S.

Venkata Sai and daughter—P.S. Yuva Sree, the claimant filed M.V.O.P.Nos.430 and 429 of 2006 respectively.

b) Respondent No.1 remained *ex parte*.

c) Respondent No.2/Insurance Company contended that accident was occurred due to the head on collision between the van and APSRTC bus and the driver of the bus was negligent. R.2 contended that the police foisted a false case against the driver of the van under the influence of the bus passengers and as such, R.2 is not liable to pay compensation. R.2 disowned its liability also on the ground that the R.1 violated the terms and conditions of the policy as driver of the van had no valid driving licence at the time of accident and the van has not permit. Thus, R.2 prayed to dismiss the O.P.

d) Respondent No.3/APSRTC contended that the accident was occurred due to the negligence of the driver of the van and criminal case was also registered against him and as such, it is not liable to pay any compensation. R.3 submitted that Sri T.N. Bhushanam was the driver and Sri P.R. Chandra was the conductor of the bus on 10.12.2005 and the bus was going slowly on the left side margin of the road due to rain and when it reached Subba Naidu Kandriga Cross, a van came in opposite direction at high speed and the driver lost control over it and dashed the front side portion next to driver's seat from third seat and dragged upto six rows and six rows of seats were detached from the bus and the deceased and some others who were sitting in those seats died on the spot. R.3 contended that the

compensation claimed is excessive and thus prayed to dismiss the O.P.

e) During trial, PWs.1 and 2 were examined and Exs.A.1 to A.5 were marked on behalf of the claimant. Policy copy filed by respondent No.2 was marked as Ex.B.1.

f) The Tribunal on appreciation of both oral and documentary evidence on record, has awarded total compensation of Rs.4,29,000/- with costs and interest at 7.5% p.a under different heads as follows:

Loss of income	Rs.3,84,000-00
Loss of consortium	Rs. 15,000-00
Funeral expenses	Rs. 10,000-00
Loss of estate	Rs. 20,000-00

Total	Rs.4,29,000-00

The Tribunal exonerated the respondent No.3 and fastened the liability on respondents 1 and 2.

Hence, the appeal by Insurance Company.

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

4) Heard arguments of Sri K.Sita Ram, learned counsel for appellant/ Insurance Company and Sri P. Govind Reddy, learned counsel for respondent No.1/claimant. Notice sent to R.2 and R.3 was not yet returned. Since R.2 remained *ex parte* before the Tribunal and suffered decree, his absence in this

appeal is not a consequence in view of decision reported in ***Meka Chakra Rao vs. Yelubandi Babu Rao @ Reddemma and others***^[1].

5) Learned counsel for appellant/ Insurance Company attacked the award on two main grounds:

a) Firstly, he contended that the accident was occurred purely due to the fault of the bus driver as the bus was overloaded with the passengers and inspite of it, the bus driver drove the bus at high speed and in a rash and negligent manner and dashed the milk van which was going on extreme left side of the road in a slow manner and hence the Tribunal ought to have fixed the entire liability on the 3rd respondent/APSRTC. He alternatively argued that in any event it is a case of head on collision between the two vehicles and as such the Tribunal atleast ought to have apportioned the liability between the two vehicles.

b) Secondly, learned counsel argued that the compensation was excessive inasmuch as the Tribunal without having any basis, fixed the notional income of the deceased, who was only a housewife and not an earning member, as Rs.3,000/- p.m and thereby compensation was unduly escalated. He thus prayed to allow the appeal.

6) Per contra, learned counsel for 1st respondent/ claimant supported the award arguing that the documentary evidence particularly Motor Vehicle Inspector's Report would clinchingly

show that fault in the accident rested with milk van driver alone and therefore, the Tribunal rightly fixed the liability on respondents 1 and 2 in the O.P. He further argued that the Tribunal basing on the decision reported in **Smt. Lata Wadhwa and others vs. State of Bihar and others**^[2] rightly fixed the notional income of the deceased as Rs.3,000/- p.m and thus the compensation was just and reasonable and there is no need to review the same. He thus prayed to dismiss the appeal.

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

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

8) **POINT:** The first contention of appellant is concerned, it must be said that learned counsel for appellant/ Insurance Company made a feeble attempt firstly to project as if there was no fault of the van driver and secondly that it was a case of head on collision between the two vehicles and hence if not resting entire liability on the RTC bus driver, it should be apportioned between the two vehicles. On a perusal of the evidence on record, I hold that the above argument does not have teeth. It is a claim under Section 163-A of M.V. Act and so the claimant need not establish the fault of the driver concerned. Perhaps in that view of the matter, the claimant has not examined any eye witness to the accident. He examined himself as PW.1 and produced Exs.A.1 to A.5—documentary

evidence. Admittedly, PW.1—the claimant is not an eye witness. Therefore, obviously we have to fall back on the documentary evidence to know which of the two drivers was responsible for the accident.

a) Ex.A.1—FIR was lodged by the bus conductor. Narrating the manner of occurrence of accident he mentioned that when the bus reached Subba Naidu Kandriga cross road at about 12:00 noon, the offending van which was coming from Uthukota came in the opposite direction being driven at high speed by its driver and dashed on the right side body part of the bus and thereby about 75% of the right side portion of the bus was cut and due to the impact of the hit, two ladies, one male and two children died on the spot. In Ex.A.3—Inquest Report also the inquestdars opined that the van driver was responsible for the accident. Then we have Ex.A.5—Motor Vehicle Inspector's report. In my view, the observations of M.V. Inspector are very much pertinent to clinch the issue. In his report, the M.V. Inspector narrated that the road was 32 feet wide with black top with a margin of 2 feet on either side. He further narrated that there is a road curve at the accident spot which is not a blind curve and there is no gradient. Regarding the conditions of the vehicles, he narrated that the milk van L.G.C is concerned, propeller shaft, radiator, fan, chasis were damaged and wind-sheet glass broken. Bus is concerned, wind sheet glass, Engine, Radiator, fan, **right side body**, headlights, indicators damaged. He mentioned that damage to both vehicles could

not be fully estimated as the vehicles were interlocked. The brake system of both vehicles was found in order. He opined that the accident was not due to any mechanical defect of the vehicles.

b) The above narration goes to show that sofaras the topography of the scene of accident is concerned, the road has a plain curve at the accident spot and it was not a blind curve to confuse the drivers of either side. The accident it appears, occurred while the vehicles were negotiating the curve. The right side portion of the bus behind the driver's seat upto 5 or 6 rows was damaged. Admittedly, driver's seat was not damaged and driver was also not injured in the accident. It would indicate that the accident was not resulted due to head on collision between the two vehicles as contended by the appellant/Insurance Company. On the other hand, the accident was occurred while the vehicles were crossing at the bend of the curve and in that process the milk van driver went and scratched some rows of the seats behind the bus driver. So the M.V. Inspector's report supports the version of bus conductor in FIR and the inquestdars in Ex.A.3—Inquest report. Thus it is clear that the milk van driver was solely responsible for the accident and this was confirmed by the investigating agency also as is evident from Ex.A.2—charge sheet. Hence the first argument of the appellant cannot be countenanced.

9) Sofaras the quantum of compensation is concerned, the deceased was 35 years old and a hale and healthy lady.

Considering it and relying upon the decision in ***Smt. Lata Wadhwa***'s case (2 supra), the Tribunal rightly fixed her notional income as Rs.3,000/- p.m in preference to Rs.15,000/- as laid down in the Second Schedule of the M.V.Act. I find no irregularity or illegality in it. Hence, the computation of compensation by the Tribunal can be said to be appropriate. Compensation awarded under other heads also is just and reasonable. So at the outset, the award passed by the Tribunal is correct in all respects and there is no need to interfere with the same.

10) In the result, this M.A.C.M.A. is dismissed by confirming the award passed by the Tribunal in M.V.O.P.No.428 of 2006. No costs in the appeal.

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

U. DURGA PRASAD RAO, J

Date: 21.01.2015

Note: L.R. copy to be marked: Yes/No
scs

[\[1\]](#) 2001 (1) ALT 485

[\[2\]](#) (2001) 8 SCC 197