

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.1046 of 2009

JUDGMENT:

This appeal is filed by the respondents-Andhra Pradesh State Road Transport Corporation, challenging the judgment and award dated 11.1.2008 passed in O.P. No.1738 of 2006 on the file of the Motor Accidents Claims Tribunal-cum-XII Additional Chief Judge (Fast Track Court), City Civil Court, Hyderabad.

2. The parties will hereinafter be referred to as they are arrayed before the Tribunal for the sake of convenience.

3. The facts leading to filing of the present appeal, in brief, are as follows: On 15.8.2006 at 10.30 A.M., the first petitioner and her husband by name Dasari Narasimha were proceeding, by walk, to Government School at Machabollaram. At that time, the driver of the bus bearing No.AP 9Z 7602 had driven the same in a rash and negligent manner and hit Narasimha (hereinafter referred to as, the deceased), who sustained grievous injuries and died on the spot. The Station House Officer, Alwal Police Station registered a case in crime No.333 of 2006 under Section 304-A IPC against the driver of the bus. By the time of the accident, the deceased was aged about 26 years and used to earn Rs.4,500/- per month by attending stone cutting work. The petitioners are dependants on the income of the deceased. The bus belongs to the respondents-A.P.S.R.T.C., and therefore, the respondents are liable to pay compensation of 4,00,000/- to the petitioners with interest and costs.

4. The respondents filed counter denying all the averments made in the petition, *inter alia*, contending that the accident occurred due to negligence on the part of the deceased only and there was no negligence on the part of the driver of the bus. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence, the petition is liable to be dismissed.

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

1. Whether the accident resulting in death of Dasari Narasimha occurred owing to the rash and negligent driving of the driver of bus bearing No.AP 9Z 7602?
2. Whether the petitioners are entitled for compensation and, if so, to what amount and from whom? And
3. To what relief?

6. During the course of the trial, on behalf of the petitioners, P.W.1 was examined and Exs.A1 to A5 were marked. On behalf of the respondents, R.W.1 was examined, but no document was marked.

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 rash and negligent driving of the driver of the RTC bus, which resulted in the death of deceased, and allowed the petition by awarding compensation of Rs.4,00,000/- with interest at 6% per annum from the date of petition till the date of realisation, directing the respondents to pay the compensation. Feeling aggrieved by the judgment and award, the respondents preferred the present appeal.

8. The contention of Sri N.Vasudeva Reddy, learned counsel for the appellants is three fold: (1) The Tribunal ought not to have placed reliance on the testimony of P.W.1, who is an interested witness; (2) The Tribunal committed error while discarding the testimony of P.W.1, who is the driver of the bus; and (3) The amount of compensation awarded by the Tribunal under various heads is on higher side.

Per contra, Sri E.Venugopal Reddy, learned counsel for the claimants, submitted that there are no grounds to interfere with the well considered judgment and award of the Tribunal.

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

(i) Whether the accident occurred due to negligence of the driver of the bus?

(ii) Whether the Tribunal has awarded just and reasonable compensation?

Point No.1:

10. In order to prove the manner of accident, the first petitioner examined her self as P.W.1 and got marked Exs.A1 to A5. To dislodge the case of the petitioners, the driver of the R.T.C. bus was examined as R.W.1. As seen from the testimony of P.W.1, on the date of the accident, herself and her husband-Narasimha (deceased) were proceeding towards Government School, Machabollaram. In the meanwhile, the driver of the bus-R.W.1, had driven the same in a rash and negligent manner from Alwal side and hit her husband. Her testimony further reveals that her husband died on the spot. As per the testimony of R.W.1, when the bus reached near

Machabollaram, two persons were quarrelling with each other and one person fell down under the backwheels of the bus. P.W.1 is none other than the wife of the deceased. Simply because P.W.1 happens to be the wife of the deceased, by itself is not a sufficient ground to discard her testimony in toto. The test to be applied is whether the testimony of particular witness inspires confidence of the court or not. In the cross-examination of P.W.1, nothing is elicited to shake her testimony so far as the manner of the accident is concerned. If really the deceased himself fell down under the backwheels of the bus, what prevented R.W.1 to inform the manner of accident to the nearest Police. If really the version introduced by R.W.1 is true and correct, the same might have reflected in the counter filed by the respondents. Any amount of oral evidence without pleading is of no avail. In order to avoid payment of compensation to the petitioners, the possibility of introducing such a version in the chief examination of R.W.1 cannot be ruled out completely. In order to get acquittal in the criminal case registered against R.W.1, the possibility of distortion of the facts cannot be ruled out completely. The oral testimony of R.W.1 is not supported by any other evidence. The oral testimony of P.W.1 is supported by the recitals of Exs.A1-F.I.R., A2-charge sheet, and A5-M.V.I. report. The recitals of Exs.A3-post mortem report and A4-inquest panchanama, clearly reveals that the deceased died due to the injuries sustained in the road accident. The Tribunal rightly considered all these aspects and arrived at a conclusion that the accident occurred due to rash and negligent driving of the driver of the bus. The Tribunal has assigned cogent and valid reasons to its finding. I am fully agreeing with the finding recorded by the Tribunal on issue No.1.

11. Having regard to the facts and circumstances of the case, this court is of the considered view that the accident occurred due to rash and negligent driving of the driver of the bus, which resulted in the death of deceased. Therefore, I am unable to accede to the contention of learned counsel for the respondents-A.P.S.R.T.C. that the accident occurred due to negligent act of the deceased only. Accordingly, the point is answered.

Point No.2:

12. A perusal of the record reveals that by the time of the unfortunate death, the deceased was aged about 26 years. The Tribunal has rightly taken the multiplier '16'. As per the testimony of P.W.1, her husband used to earn Rs.4,500/- per month. Basing on the material available on record, the Tribunal arrived at a conclusion that

the deceased may earn Rs.3,000/- per month. In the villages, one may get Rs.3,000/- per month even by attending coolie work. Therefore, I am of the considered view that the Tribunal rightly assessed the monthly income of the deceased as Rs.3,000/-. After deducting 1/3rd towards personal expenses of the deceased, his contribution to the family comes to Rs.2,000/- per month. The Tribunal assessed the loss of dependency at (Rs.2,000 X 12 X 16) Rs.3,84,000/-. The Tribunal also awarded Rs.10,000/- towards loss of consortium, Rs.2,000/- towards funeral expenses and Rs.4,000/- towards loss of estate. Awarding of Rs.4,00,000/- as compensation is just and reasonable to meet the ends of justice. Therefore, the submission of learned counsel for the respondents that the compensation awarded by the Tribunal is on higher side is not sustainable. Accordingly, the point is answered.

13. In the result, the appeal is dismissed. There shall be no order as to costs. As a sequel, the miscellaneous petitions, pending in this appeal, if any, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 25.3.2015

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