

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A.NO.2669 OF 2011

JUDGMENT:

Aggrieved by the award dated 11.07.2011 in M.V.O.P.No.870 of 2008 passed by the I Additional District Judge-cum-I Additional Motor Accidents Claims Tribunal, Nellore, the respondent/APSRTC preferred the instant M.A.C.M.A.

2. The factual matrix of the case is thus, as per the claimant, the deceased Ansar Basha was working as Work Inspector, Somasila Project and on 04.02.2008 at about 6.20 pm while he was crossing the road from North to South at Somasila Road center, Atmakur, APSRTC bus bearing No.AP-11-Z-1993 attached to Kavali Depot came from Panchayat Bus Stand side being driven by its driver in a rash and negligent manner at high speed and without blowing horn and dashed the deceased and thereby, the deceased fell down and the front right side tyre of the bus ran over his left leg causing him grievous injuries. He was immediately admitted in Government Hospital, Atmakur and later, for better treatment, he was shifted to Government Hospital, Nellore, where he succumbed to injuries on 05.02.2008.

a) It is averred that the bus driver was responsible for the accident. It is further averred that due to untimely death of the deceased, the claimant, who is the son of the deceased, suffered mental shock and financial loss. On these claims, the claimant filed M.V.O.P.No.870 of 2008 under Section 166 of the Motor Vehicles Act, 1988, against APSRTC and claimed for Rs.5,00,000/- as compensation under different heads mentioned in the M.V.O.P.

b) The respondent filed counter opposing the claim mainly contending that there is no fault of the bus driver and the deceased himself was responsible for the accident. It is contended that at the relevant time of the accident, when the bus was proceeding from

Atmakur Panchayat Bus Station to Kavali and when the bus reached Somasila road, the bus was stopped to enable passengers to alight and after the passengers alighted, the bus slowly started and in the meanwhile, passers on the road raised cries and the bus driver suddenly stopped the bus, got down and observed that the person, who was proceeding on the road consuming liquor heavily and holding a liquor bottle, lost his control and the liquor bottle suddenly fell down from his hand and went under the stationed bus and in order to take the said liquor bottle, the said person went under the bus by bending his body and in the meanwhile, the bus started as the conductor gave signal and as a result, that person suffered injuries and later he was shifted to Government Hospital. The respondent thus contended that there was no fault of the bus driver. The respondent denied the age, employment and income of the deceased and urged the Court to put the claimant to strict proof.

c) During the trial, P.Ws.1 and 2 were examined and Exs.A1 to A4 were marked on behalf of the claimants. R.W.1-the bus driver was examined on behalf of respondent.

d) The award shows that the Tribunal, on appreciation of facts, came to conclusion that the accident was occurred due to the fault of the bus driver. It did not agree with the contention of the respondent that the deceased, in an intoxicant stage, went under the bus to pick up the liquor bottle and got injured. Quantum of compensation is concerned, the Tribunal, having considered that the deceased was working as Work Inspector in Somasila Project and must be earning Rs.10,000/- per month and contributing at least a sum of Rs.5,000/- per month to his family, awarded a sum of Rs.5,00,000/- as prayed by the claimant. Hence, the instant M.A.C.M.A.

3. Heard the arguments of Sri P.Durga Prasad, learned Standing Counsel for the APSRTC-appellant and Smt. M.Suguna, learned

counsel for the respondent-claimant.

4. Fulminating the award, learned Standing Counsel for APSRTC argued that the accident was occurred due to the fault of the deceased himself, as he was in an intoxicant stage, which was clearly deposed by R.W.1, but the Tribunal, without considering the evidence on record in a proper manner, held as if the driver was responsible for the accident. On this ground, he repudiated the liability on Insurance Company. Secondly, learned counsel questioned the quantum of compensation as high side. Thirdly, he argued that the rate of interest awarded by the Tribunal is excessive. Learned counsel argued that in this case, the claimant has not placed any evidence showing that the deceased was working as Works Inspector and earning Rs.16,000/- and odd but the Tribunal erroneously accepted the employment of the deceased as Works Inspector and fixed his salary as R.10,000/- on assumption and computed compensation and thereby, compensation was highly escalated. He submitted that there is every necessity to reassess the compensation, if the appellant is not exempted from its liability. He thus prayed to allow the appeal and exempt the appellant or alternately, reassess the compensation.

5. **Per contra**, learned counsel for the respondent-claimant supported the award and argued that so far as the fault of the driver is concerned, the Tribunal correctly appreciated the evidence on record and held that the bus driver was responsible for the accident. With regard to quantum of compensation, he submitted that though the claimant failed to produce employment particulars of the deceased, still in the First Information Report and Inquest Report, the deceased was described as Works Inspector, which established his employment and therefore, the Tribunal took his income moderately at Rs.10,000/- and computed compensation and hence, the same does not require any reassessment. He, thus,

prayed to dismiss the appeal.

6. In the light of the above rival arguments, the point for determination is whether the award passed by the Tribunal is factually and legally sustainable?

7. The accident, involvement of APSRTC bus bearing No.AP-11-Z-1993 and the death of the deceased were admitted facts. The first point raised by the appellant is that the deceased himself was responsible for the accident as he was in an intoxicant stage and tried to pick up the liquor bottle fell under the bus and in that process he got injured and died. On this aspect, we have the evidence of P.W.2 and R.W.1.

a) P.W.2 is a fruit vendor in Atmakur Town and he is stated to be eye witness. He deposed that on 04.02.2008 at about 6.20 pm, when the deceased was crossing the road from North to South at Somasila road center after giving the signals and observing the traffic, in the meanwhile, the bus came from Panchayat bus stand side being driven by its driver in a rash and negligent manner and at high speed and without blowing horn, dashed the deceased and caused the accident. He arrested that the accident was occurred only due to the fault of the bus driver. In the cross examination, he denied the suggestion that he did not witness the accident. He denied the further suggestion that the accident was occurred due to the fault of the deceased himself.

b) R.W.1 is the bus driver. His evidence is that when the bus reached Somasila road, it was stopped for alighting the passengers and after that, the bus slowly started. In the meanwhile, the passers on road raised cries and on hearing the same, he stopped the bus and got down and found a person under the bus got injured. He came to know that the said person was proceeding on the road by consuming liquor heavily and holding the liquor bottle and he lost control and thereby, the liquor bottle suddenly fell down from his

hand and went under the stationed bus and in order to pick up the said liquor bottle, he went under the bus by bending his body without informing any one and in the meanwhile, the conductor gave signal and he (R.W.1) started the bus and as a result, the person under the bus got injured. R.W.1 stated that there was no fault on his part and accident was occurred due to the fault of the deceased himself. He denied the suggestion that the deceased did not consume liquor and he was not holding any liquor bottle and that he himself drove the bus in a rash and negligent manner and caused the accident.

c) Thus, we have diverse evidence on the manner of occurrence of accident. P.W.2 is concerned, he was a third party and in Ex.A4-charge sheet, he was cited as eye witness (L.W.3) and he has nothing to do with the deceased. Therefore, his version can be believed. He emphatically deposed that when the deceased was crossing the road, the bus came at high speed and in a rash and negligent manner and dashed him. He denied the suggestion that the deceased consumed liquor and holding liquor bottle. Thus, his evidence falsifies the claim of R.W.1. Even otherwise in Ex.A3-post mortem report, nothing was mentioned about the deceased consuming liquor and about the presence of the liquor in his intestines. So, in view of this evidence, the interested evidence of R.W.1 cannot be believed. Therefore, the Tribunal rightly concluded that the bus driver was responsible for the accident.

8. The next contention of the appellant is with regard to the quantum of compensation. It is true that the claimant has not produced any record regarding employment and salary of the deceased. According to the claimant, the deceased was working as Works Inspector in Somasila Project. Though the claimant has not produced any record, we will find in Ex.A1-FIR and Ex.A2-inquest report describing the deceased as Works Inspector in Somasila

Project. These documents were prepared within short time after accident and therefore, the particulars mentioned therein about the employment of the deceased can be accepted. It is true that there is no record relating to the salary of the deceased. However, if we accept him to be a Works Inspector, his earnings can be assumed as Rs.10,000/- per month, which cannot be on high side. Therefore, by no stretch of imagination, the compensation computed by the Tribunal can be said to be excessive. I find no force in the contention that compensation granted is excessive.

9. So far as the rate of interest is concerned, the Tribunal awarded 9% per annum, which is a bit on high side. As per the present rate of interest, the same can be reduced to 7.5% per annum through out.

In the result, the M.A.C.M.A. is partly allowed and while upholding compensation awarded by the Tribunal, the rate of interest is reduced from 9% to 7.5% per annum through out. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(U.DURGA PRASAD RAO, J)

13th July 2015
RRB