

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.84 of 2013

JUDGMENT:

1 Respondent in M.V.O.P.No.380 of 2009 on the file of
Chairman, Motor Accidents Claims Tribunal-cum-III Additional
District Judge, Chittoor District at Tirupati filed the present appeal
under Section 173 of the Motor Vehicles Act, challenging the
Judgment and award dated 08.11.2011 passed in the said O.P.
wherein and whereby an amount of Rs.4,00,000/- was awarded
as compensation as against the claim of Rs.4.00 lakhs.

2 For the sake of convenience, parties to this appeal will
hereinafter be referred as they are arrayed before the Tribunal.

3 The facts leading to filing of the present appeal, briefly,
are as follows:

4 On 31.07.2007 A.Venkata Ramana and Nageswara Rao
stopped the lorry bearing No.AAD 2786 on the left side road
margin in order to get another lorry bearing No.AP 26 T 4550
repaired. In the meantime, the driver of the RTC bus bearing
No.AP-11-Z-1517 had driven the same in a rash and negligent
manner and dashed against the lorry bearing No.Ap 26 T 4550
causing instantaneous death of Venkata Ramana (hereinafter
referred to as 'the deceased') and injuries to Nageswara Rao.
The accident occurred due to the rash and negligent driving of
the driver of the RTC bus bearing No.AP-11-Z-1517 against
whom, the Station House Officer, Chandragiri P.S. registered a
case in Cr.No.115 of 2007 under Sections 304-A and 337 of IPC.

By the time of death, the deceased was aged 49 years and
getting salary of Rs.3,000/- per month apart from batta of

Rs.3,000/- to 4,000/- p.m. as driver of lorry. First petitioner is wife and petitioner No.2 is son of the deceased and they are dependents on the income of the deceased. The respondent being the owner of the RTC bus bearing No.AP 11 Z 1517 is vicariously liable for the wrongful acts done by its driver in the course of employment. Hence the petitioners filed the claim petition seeking compensation of Rs.4.00 lakhs from the respondent.

5 The respondent filed counter denying the various averments made in the petition including the age and income of the deceased. The accident occurred due to parking of lorries negligently on the blind turning in the ghat road without taking care and precautions i.e. without putting signals and parking lights and that there was no negligence on the part of the driver of the RTC bus. The petition is not maintainable for non-impleading of the owners and insurers of both the lorries. The amount of compensation claimed by the petitioners is highly excessive and exorbitant. Hence the petition may be dismissed.

6 Basing on the above pleadings, the Tribunal framed the following issues for trial:

- i. Whether the deceased A. Venkata Ramana, husband of 1st petitioner and father of 2nd petitioner died in the accident on 31.08.2007 due to rash and negligent driving of the Bus bearing No.AP 11 Z 1517 by its driver as pleaded?
- ii. Whether the petitioners are entitled for compensation, If so, to what amount?
- iii. To what relief?

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7 During the course of trial, on behalf of the petitioners P.Ws.1 and 2 were examined and Exs.A.1 to A.4 were marked. On behalf of the respondent no oral or documentary evidence

was adduced.

8 On appreciation of 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 bearing No.AP 11 Z 1517 which resulted in the death of the deceased and allowed the petition in toto by awarding compensation of Rs.4,00,000/- with interest at 7.5% p.a. from the date of filing of the petition till the date of deposit. Feeling aggrieved by the said judgment and award of the Tribunal, the respondent preferred the present appeal.

9 The contention of the learned counsel for the respondent is that the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of the RTC bus bearing No.AP 11-Z-1517 is based on assumptions and presumptions, which is not permissible under law. He further submitted the finding of the Tribunal that the deceased may earn Rs.4,000/- p.m. is not supported by oral or documentary evidence. He further submitted that the compensation awarded under various heads is highly excessive and exorbitant.

10 *Per contra*, the learned counsel for the petitioners submitted that the finding of the Tribunal on issue No.1 is supported by oral and documentary evidence. He further submitted that the Tribunal awarded just and reasonable compensation.

11 Now the points that arise for determination in this appeal are:

1. Whether the accident occurred due to the rash and negligent driving of the driver of the RTC bus bearing No.AP 11 Z 1517, which resulted in the death of the deceased?

ii. Whether compensation awarded by the Tribunal is just and reasonable or not?

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Point No.1:

12 In order to prove the manner of accident, the first petitioner herself examined as P.W.1 and got marked Exs.A.1 to A.4. Admittedly, P.W.1 is not an eyewitness to the accident, therefore, her evidence is no way helpful to the case of the petitioners. To prove the manner of accident, P.W.2 was examined. The evidence of P.W.2 clearly reveals that on the date of accident, he was proceeding in the lorry along with the deceased as cleaner of the lorry. As per the testimony of P.W.2, the accident occurred due to the rash and negligent driving of the driver of the RTC bus bearing No.AP 11 Z 1517. If really the accident occurred due to the negligent act of the deceased, as contented by the respondent, what prevented the driver of the offending bus to lodge a complaint to the concerned police in that regard? For one reason or the other, the respondent did not choose to examine the driver of the offending bus or any other eyewitness to the accident to establish that the accident occurred due to the negligence, if any, on the part of the deceased. As per the recitals of Exs.A.1 and A.2, the accident occurred due to the rash and negligent driving of the driver of the RTC bus bearing No.AP 11 Z 1517. As per the recitals of Exs.A.3 and A.4, the deceased died due to the injuries sustained by him in the road accident that occurred on 31.08.2007. The Tribunal has assigned cogent and valid reasons to its findings. There are no

grounds much less valid grounds to interfere with the finding recorded by the Tribunal on issue No.1. Basing on the oral and documentary evidence available on record, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the RTC bus bearing No.AP 11 Z 1517, which resulted in the death of the deceased. The point is answered accordingly.

Point No.2:

13 By the time of his death, the deceased was aged about 49 years. The Tribunal has taken the multiplier 13. As per the testimony of P.W.1, her husband used to earn Rs.3,000/- to Rs.4,000/- p.m. as driver. The testimony of P.W.1 clearly reveals that the deceased was driver by profession. It is common knowledge that a driver can earn not less than Rs.3,000/- p.m. Taking into consideration the age of the deceased and other attending circumstances, the Tribunal rightly arrived at a conclusion that the deceased may earn Rs.4,000/- p.m. or Rs.48,000/- p.a. Out of the said amount $\frac{1}{3}^{\text{rd}}$ has to be deducted towards personal expenses of the deceased. Thus the annual contribution of the deceased to the family would come to Rs.32,000/-. Therefore, the loss of dependency would come to $\text{Rs.32,000/-} \times 13 = 4,16,000/-$. The Tribunal awarded Rs.10,000/- towards loss of consortium and Rs.5,000/- towards funeral expenses. The compensation to which the petitioners are actually entitled to Rs.4,31,000/-. However, the claimants have claimed Rs.4,00,000/-. Therefore, the Tribunal has rightly restricted the amount of compensation to Rs.4.00 lakhs. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the respondent that the amount of

compensation awarded by the Tribunal is on higher side. The point is answered accordingly.

14 For the foregoing discussion, I see no merits in this appeal. The appeal lacks merits and bonafides and hence the same is liable to be dismissed.

15 In the result, the appeal is dismissed. As a sequel, the miscellaneous petitions, pending in this appeal, if any, shall stand closed.

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T. SUNIL CHOWDARY, J

Date: 13th August, 2015

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