

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.195 OF 2013

JUDGMENT:

This appeal is preferred under Section 173 of the Motor Vehicles Act, challenging the judgment and award dated 01.5.2012 passed in O.P. No.438 of 2010 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Anantapur.

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

3 .The facts leading to filing of the present appeal are briefly as follows: On 10.6.2010 at about 3.45 PM, one Alesam Lokesh Gowd and another were proceeding on a motor cycle bearing No.AP 21 AA 2941 on the extreme left side of the road. When they reached the railway bridge near Anand Cinema Complex, Kurnool, the driver of APSRTC bus bearing No.AP 28Z 5300 had driven the same in a rash and negligent manner and dashed against the motor cycle. Due to the accident, Lokesh Gowd fell down from the motor cycle and sustained grievous injuries on various parts of the body. Lokesh Gowd (hereinafter referred to as, the deceased) died while undergoing treatment in Government General Hospital, Kurnool. By the time of the death, the deceased was aged about 25 years and used to earn Rs.20,000/- per month. The petitioner is the wife of the deceased. Due to sudden death of the deceased, she lost her dependancy. Hence, the petition filed under Section 163A of the M.V. Act claiming a compensation of Rs.6,00,000/- from the first respondent-APSRTC with interest and costs.

4. The first respondent-APSRTC filed the counter denying all the averments made in the petition including the manner of the accident, *inter alia*, contending that there was no rashness or negligence on the part of the driver of RTC bus. The accident occurred due to the rash and negligent driving of the motor cycle by the deceased. The criminal case registered against the deceased was closed. The amount of compensation claimed by the petitioner is highly excessive and exorbitant. Hence the petition may be dismissed.

5. The second respondent, who is the mother of the deceased, remained *ex parte*.

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

(1) Whether the accident occurred due to the rash and negligent driving of APSRTC bus bearing No.AP 28Z 5300 driven by its driver as it dashed against the motor cycle of the deceased and caused the death of the deceased Lokesh Gowd?

(2) Whether the petitioner is entitled for any compensation, and if so, to what quantum and from which respondent? And

(3) To what relief?

7. During the course of inquiry, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A1 to A3 were marked. On behalf of the first respondent, R.Ws.1 and 2 were examined and Exs.B1 to B3 were marked.

8. On analysing the oral, documentary evidence and other material available on record, the Tribunal arrived at the conclusion that the accident occurred due to the rash and negligent driving of the driver of the RTC bus, and allowed the petition by awarding a compensation of Rs.6,00,000/- with interest at 7.5% per annum. Feeling aggrieved by the judgment and award, the first respondent-APSRTC preferred the present appeal.

9. The contention of learned counsel for the first respondent-APSRTC is three fold:

(1) the Tribunal has not considered the testimony of R.W.1 and recitals of Ex.B2 in right perspective;

(2) the Tribunal ought not to have attached any credence or credibility to the oral testimony of P.W.2 who is a planted witness; and

(3) the quantum of compensation awarded by the Tribunal is on higher side.

Per contra, learned counsel for the petitioner-claimant submitted that the Tribunal rightly considered the testimony of P.W.2 who is an independent witness. He further submitted that immediately after the accident, the driver of the bus lodged a false complaint, that fact was rightly considered by the Tribunal. He also submitted that the quantum of compensation awarded by the Tribunal is just and reasonable.

10. Basing on the rival contentions, the following points that arise for consideration in this appeal are:

(1) Whether the accident occurred due to rash and negligent driving of the driver of

APSRTC bus bearing No.AP 28Z 5300, which resulted in the death of the deceased?

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

Point No.1:

11. To substantiate the case, the petitioner examined herself as P.W.1 and got marked Exs.A1 to A3. P.W.2 is an eye witness. To demolish the stand of the petitioner, the driver of the RTC bus was examined as R.W.1. The employee of the first respondent was examined as R.W.2. Admittedly, P.W.1 and R.W.2 are not eye witnesses to the accident; therefore their testimony is no way helpful to establish the manner of the accident. P.W.2 is the eye witness to the accident and R.W.1 is the driver of the bus. The possibility of distortion of facts by R.W.1, in order to escape from the clutches of the law, cannot be ruled out completely. If the testimony of P.W.2 is taken into consideration, the accident occurred due to the rash and negligent driving of the RTC bus by R.W.1. In the cross-examination of P.W.2, nothing is elicited to shake his testimony so far as the manner of the accident is concerned.

12. In the additional counter, the first respondent has taken a specific plea that by the time of the accident, the deceased drove the motor cycle in zig zag manner and hit right portion of the bus. There was no chance for the deceased to lodge a complaint to the Police immediately after the accident as he sustained multiple grievous injuries. If really the motor cycle of the deceased hit right portion of the bus, what prevented the first respondent to note down the damage caused to the bus. For the reasons best known to the first respondent, he did not choose to file rough sketch of scene of offence. Non-production of Motor Vehicle Inspector's report also casts a cloud with regard to the manner of the accident as put forth by the first respondent. Absolutely there is no material on record to establish that the motor cyclist hit the bus on the right portion. In the cross-examination, R.W.1 in unequivocal terms deposed that he did not mention in the complaint that the rider of the motor cycle was proceeding on the left side of the road in zig zag manner. The fact remains that by the time of the accident, the deceased was proceedings on the left side of the road. It is not mentioned in Ex.A1 that by the time of the accident, the deceased drove the motor cycle in zig zag manner and hit the right portion of the bus. The version put forth by the R.W.1 with regard to the manner of the accident is not supported by oral or documentary evidence. The case registered against the deceased was closed in view of his death. Merely because the case was registered against the deceased by

itself is not a valid ground to believe the version put forth by the R.W.1. If the investigation *prima facie* reveals the fault on the part of the deceased, it may be otherwise. However, as observed earlier, in order to throw the blame on the deceased, lodging of complaint with the Police by R.W.1 cannot be ruled out completely. The Tribunal has considered the oral and documentary evidence in right perspective and arrived at a conclusion that the accident occurred due to rash and negligent driving of the driver of RTC bus.

13. If the petition is filed under Section 163A of the M.V. Act, the claimant need not prove the rash and negligence on the part of the driver of crime vehicle. However, the driver of crime vehicle is entitled to prove negligence, if any, on the part of the deceased in order to avoid criminal liability. As per the recitals of Ex.A2 Inquest report and Ex.A3 Post Mortem Examination report, the deceased died of the injuries sustained in the road accident. In the instant case, the material available on record clinchingly establishes that the driver of RTC bus hit the motor cyclist, who was proceeding on the left side of the road. The material produced before the Tribunal clinchingly established that the accident occurred due to the rash and negligent driving of the driver of the bus, which resulted in the death of the deceased.

14. Having regard to the facts and circumstances of the case, I am of the considered view that there was no rashness or negligence on the part of the deceased while driving the motor cycle. I am fully agreeing with the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of the RTC bus, which resulted in the death of the deceased. Hence, point No.1 is answered in favour of the petitioner and against the first respondent.

Point No.2:

15. As per the recitals of Exs.A2 and A3, the deceased was aged about 25 years. As per II Schedule appropriate multiplier that would be applicable is 18. Except the self-served testimony of P.W.1, there is no other evidence to prove that by the time of the accident, the deceased was earning Rs.20,000/- per month. As observed by the Tribunal, even by attending coolie work, one may get not less than Rs.150/- per day. However, the Tribunal has taken the income of the deceased as Rs.40,000/- per annum, as the claim was made under Section 163A of the Act. After deducting 1/3rd from out of the earning of the deceased towards his personal expenses, his contribution to the family would be Rs.26,666/- per annum. Thus the loss of

dependency would come to (Rs.26,666 X 18) Rs.4,79,988/-, which was rounded off to Rs.4,80,000/-. The Tribunal also awarded Rs.10,000/- towards loss of consortium, Rs.10,000/- towards loss of estate and Rs.5,000/- towards funeral expenses. The total compensation, which came to Rs.6,05,000/-, was restricted to Rs.6,00,000/- as claimed by the petitioner. The petitioner has not filed appeal or cross-objections seeking enhancement of the compensation. Viewed from any angle, the quantum of compensation awarded by the Tribunal is just and property. Therefore, I am unable to accede to the contention of the learned counsel for the first respondent that the quantum of compensation awarded by the Tribunal is excessive.

16. Having regard to the facts and circumstances of the case, I am of the considered view that the Tribunal has awarded just and reasonable compensation. There are no grounds much less valid grounds to interfere with the judgment and award passed by the Tribunal. Accordingly, this point is answered.

17. In the result, appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 06.10.2015.

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