

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

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M.A.C.M.A.No.1294 of 2010

JUDGMENT:

This appeal is filed by the appellants-Andhra Pradesh State Road Transport Corporation (APSRTC) challenging the judgment and award, dated 21-07-2009 passed in O.P.No.633 of 2007 on the file of the Chairman, Motor Accident Claims Tribunal-cum-District Judge, Nizamabad (for short, 'the Tribunal').

2. For the sake of convenience, the parties are hereinafter referred to as they are arrayed in the O.P. before the Tribunal.

3. The facts leading to filing of the appeal, in brief, are as follows:

On 14-06-2007 one Muthyala Srinivas Reddy (hereinafter referred to as 'the deceased') was proceeding towards Akkapoor from Kamareddy on a motorcycle bearing No.AP-23/E-3926, when he reached near Palvancha bridge, at about 5 pm driver of the APSRTC bus bearing No.AP-10/Z-3835 came from opposite direction in a rash and negligent manner and hit the motorcycle of the deceased. The deceased died on the spot due to injuries sustained by him. Basing on the complaint, the Station House Officer, Machareddy registered a case in Crime No.103 of 2007 under Section 304-A I.P.C. against the driver of the bus. By the time of accident, the deceased was aged about 36 years and used to earn Rs.20,000/- per month as an agriculturist and over the poultry farm. The petitioner No.1 was the wife, petitioners 2 and 3 are the children, petitioners 4 and 5 are the parents of the deceased and dependants on the income of the deceased. The

respondents 1 and 2 are being the owner of RTC bus bearing No.AP-10/Z-3835 are liable to pay the compensation to the petitioners. The petitioners filed petition under Section 166 of the M.V. Act claiming

compensation of Rs.10,00,000/-.

4. The respondents filed counter denying the factum and manner of the accident *inter alia* contending that the accident occurred due to rash and negligent driving of the motorcycle by the deceased and there was no negligence on the part of the driver of the crime vehicle. The police registered a criminal case against the driver of the bus in collusion with the petitioners, inspite of lodging of complaint by the driver of the bus. The amount of compensation claimed by the petitioners under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

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

1. Whether the accident has taken place due to rash and negligent driving of driver of APSRTC bus bearing No.AP-10/Z-3835 by its driver?
2. Whether the petitioners are entitled for compensation? If so, to what just amount and against whom?
3. To what relief?

6. During the course of trial, on behalf of the petitioners, PWs.1 and 2 were examined and Exs.A.1 to A.6 were marked. On behalf of the respondents, RW.1 was examined.

7. On appreciating the material available on record, the Tribunal arrived at a conclusion that the accident was occurred due to rash and negligent driving of the driver of the APSRTC bus and allowed the petition in part awarding compensation of Rs.5,79,000/-.

8. Feeling aggrieved by the judgment and award of the Tribunal, the respondents preferred the present appeal.

9. Heard Sri N.Vasudeva Reddy, the learned counsel for the appellants and Sri Ch.Janardhan Reddy, learned counsel for the respondents.

10. The contention of the learned counsel for the respondents/appellants is two fold;

- i) The Tribunal has not rightly considered the oral testimony of RW.1 and arrived at conclusion that the accident occurred due to rash and negligent driving of the driver of the bus basing on the assumptions and presumptions;
- ii) The Tribunal has not properly assessed the income of the deceased.

11. Per contra, learned counsel for the claimants/respondents submitted that there are no grounds much less valid grounds to interfere with the well considered judgment and award of the Tribunal.

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

- i) Whether there was any contributory negligence on the part of the deceased to cause the accident?
- ii) Whether the Tribunal has awarded fair, just and reasonable compensation?

POINT No.1:

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13. To prove the manner of accident, the 1st petitioner examined herself as PW.1 and got marked Exs.A-1 to A-4. PW.2 is the eye-witness to the accident. To rebut the stand of the petitioners, the driver of RTC bus was examined as RW.1. PW.1 is not an eye-witness to the accident, therefore, her testimony is no way helpful to prove the manner of accident. As per the testimony of PW.2 on the date of accident, he was traveling in the bus. If the testimony of PW.2 is taken into consideration, the driver of the bus drove the bus in a rash and negligent manner and hit the motorcycle of the deceased from opposite direction. As per the testimony of RW.1, at the time of accident, he was proceeding at a speed of 30 Kms and the rider of the Scooter came from wrong side and dashed the bus. PW.2 is not an interested witness, when compared to the RW.1. In the cross-examination of PW.2, nothing is elicited insupport of the stand taken by second respondent. The testimony of PW.2 is cogent and convincing in all aspects. There are no grounds, much less, valid grounds to

discard the testimony of PW.2. RW.1 being the driver of the RTC bus, possibility of distortion of manner of accident at the instance of his superiors or in order to get acquittal in the criminal case registered against him, cannot be ruled out completely. As per the testimony of RW.1, he lodged a complaint to the police. If really, RW.1 lodged a complaint to the police what prevented him to produce the same before the Tribunal. In the cross-examination RW.1 in unequivocal terms deposed that the police investigated into the matter and filed charge sheet against him. Whatever deposed by PW.1 and PW.2 is fully supported by Ex.A.1 First Information Report (FIR), Ex.A.2 charge sheet. A perusal of Ex.A.3 scene of offence panchanama

also indicates the manner of the accident. As per the recitals of Ex.A.4 Post Mortem Examination report (PME), the deceased died due to injuries sustained in the accident. Except the self-served testimony of RW.1, there is no other convincing evidence to substantiate the stand of the respondents. Having regard to the facts and circumstances of the case and basing on the material available on record, I am unable to accede to the contention of the learned counsel for the second respondent that the deceased was also equally responsible to cause the accident. The findings recorded by the Tribunal on issue No.1 is supported by the oral and documentary evidence. There are no grounds, much less, valid grounds to set aside the finding of the Tribunal on issue No.1.

14. In the light of the foregoing discussion, I am of the considered view that the accident occurred due to rash and negligent driving of RTC bus driven by R.1. Accordingly, the point No.1 is answered in favour of the petitioners and against the respondent.

POINT No.2:

15. As per the recitals of Ex.A.4 PME report, the deceased was aged 36 years. The Tribunal has taken multiplier as “14” by placing reliance

on the Second Schedule of Section 163-A of the Motor Vehicles Act, 1988 (for short, 'the M.V.Act'). As per the principle enunciated in **Sarla**

Verma v. Delhi Transport Corporation^[1], the multiplier for the age group of '36' to '40' years is '15'. Therefore, I am of the considered view that the Tribunal has applied appropriate multiplier i.e.'14'. As per the testimony of PW.1, her husband used to earn Rs.20,000/- per month. In the cross-examination PW.1 in unequivocal terms deposed that she did not file any document to prove that her husband was having Poultry farm. A perusal of Ex.A.5 copy of R.C. reveals that deceased purchased the tractor and trailer during his life time. A perusal of Ex.A.6 reveals that the deceased was having Ac.03-00 guntas of land. Basing on the material available on record, the Tribunal arrived at a conclusion that the deceased was an agriculturist by profession. It is not possible for the parties to produce documentary evidence to prove the avocation and income of the deceased in each and every case. Fortunately, in this case, the petitioners produced Exs.A.5 and Ex.A.6 to prove the avocation of the deceased. In the absence of documentary evidence, some guess work to determine the income of the deceased. The Tribunal assessed monthly income of the deceased as Rs.5,000/-. Therefore, I am unable to accede to the contention of the learned counsel for the appellants that the Tribunal has not assessed the income of the deceased on correct lines. Viewed from any angle,

I am of the considered view that the deceased may earn Rs.5,000/- per month and Rs.60,000/- per annum. Out of which, 1/3rd shall be deducted towards personal expenses of the deceased.

The deceased may contribute Rs.40,000/- per year
(Rs.60,000-Rs.20,000=Rs.40,000/-) to the family members.

Loss of dependency comes to Rs.5,60,000/-
(Rs.40,000 x 14 =Rs.5,60,000/-). The Tribunal awarded an amount of Rs.15,000/- towards loss of consortium, Rs.2,000/- towards transport

charges and Rs.2,000/- towards funeral expenses. The amount of compensation awarded by the Tribunal under various heads is just and reasonable. Therefore, I am unable to accede to the contention of the learned counsel for the appellants that the amount of compensation awarded by the Tribunal is on higher side.

16. Having regard to the facts and circumstances of the case, I am of the considered view that there are no grounds much less valid grounds to interfere with the well considered judgment and Award passed by the Tribunal.

17. Accordingly, the Appeal is dismissed. There shall be no order as to costs. The respondent No.2 herein is at liberty to file petition for declaring her as major before the Tribunal.

18. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

05-02-2015
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