

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.176 of 2012

JUDGMENT:

Challenging the Award dt:10.01.2011 in O.P.No.497 of 2007 passed by the Chairman, MACT-cum-Judge, Family Court-cum-Additional District Court, at Mahabubnagar (for short 'the Tribunal'), the APSRTC preferred the instant appeal.

2) The factual matrix of the case is thus:

- a. The first claimant is the wife, second claimant is the minor son and claimants 3 and 4 are the parents of the deceased—E.Parvathalu. Their case is that on 13.07.2007, when he and one Polam Kistaiah were proceeding on motorcycle bearing No.AP 07 G 2626 from Uddandapur village towards Jadcherla and at about 5:30pm when they reached in front of R & B Guest House, Jadcherla, one RTC bus bearing No.AP 28 Z 385 of Nagarkurnool depot, came from back side being driven by its driver in a rash and negligent manner, dashed the motorcycle and thereby, both the deceased and the pillion rider sustained injuries and died on the spot. It is averred that the accident was occurred due to rash and negligent driving by the driver of the offending RTC bus and due to sudden demise of the deceased the claimants who are his dependants became destitutes. On these pleas, they filed O.P.No.497 of 2007 under Section 166 of Motor Vehicles Act, 1988 (for short "the Act") against respondents 1 and 2—APSRTC and claimed Rs.4,50,000/- as compensation.
- b. The respondents 1 and 2/APSRTC filed counter and denied all the material averments made in the claim petition and urged to put the claimants in strict proof of the same. It further denied the

avocation of the deceased and his contribution to the family. It disowned the liability on the ground that the accident was occurred due to gross negligence of the rider of the motorcycle himself. Finally it contended that the compensation claimed is excessive and thus prayed to dismiss the O.P.

- c. During trial, PWs.1 and 2 were examined and Exs.A1 to A8 were marked on behalf of claimants. No oral or documentary evidence was adduced on behalf of respondent.
- d. The Tribunal on appreciation of both oral and documentary evidence awarded Rs.4,42,000/- as compensation against respondents with proportionate costs and interest @ 7.5% p.a. under different heads as below:

Loss of dependency Rs. 4,32,000-00

Funeral expenses Rs. 2,000-00

Loss of estate Rs. 2,500-00

Loss of consortium Rs. 5,000-00

Total Rs. 4,41,500-00

(Rounded of to Rs.4,42,000/-)

Hence, the appeal by APSRTC.

3) The parties in this appeal are referred as they were arrayed before the lower Tribunal.

4) Heard arguments of Sri B.Mayur Reddy, learned Standing Counsel for appellants/APSRTC and Sri Bajrang Singh Thakur, learned counsel for respondents/claimants.

5) Challenging the award learned Standing Counsel for APSRTC/

appellants firstly contended that the Tribunal erred in holding that the bus driver was responsible for the accident. He would argue that as per Ex.A.2—crime scene panchanama, the bus was proceeding on the extreme left side of the road which indicates that the bus driver was not at fault. However, the Tribunal failed to take into consideration this aspect. He further argued that the Tribunal ought not to have considered PW.2 as an eye witness since even on his own admission he was at a long distance from the deceased and so he could not have watched the manner of occurrence of accident. He thus argued that the Tribunal did not appreciate the oral and documentary evidence in a right perspective. Finally, he argued that the compensation was highly excessive and exorbitant and prayed at the first instance to allow the appeal and exempt the Corporation from the liability and alternatively to reduce the compensation suitably.

6) Per contra, learned counsel for respondents/claimants argued that having regard to the evidence of PW.2, who was an eye witness to the accident and who lodged the FIR, the Tribunal rightly believed his evidence and came to the opinion that the bus driver was responsible for the accident. The appellants/ Corporation has not examined its bus driver or any other passenger to buttress its contention that bus driver was not at fault. As such, he argued, it cannot now contend that its driver was innocent. Learned counsel further contended that the compensation granted by the Tribunal was in fact not just and reasonable one as the Tribunal failed to take into consideration the future prospects of the deceased and it also did not award sufficient amount under conventional heads and therefore, compensation was already reduced drastically and the same need not be reduced further. He thus prayed to dismiss the appeal.

7) In the light of above rival arguments, the point for determination is:

“Whether the award passed by the Tribunal is factually and legally correct?”

8) **POINT:** The accident, involvement of the bus bearing No.AP 28 Z 385 and motorcycle bearing No.AP 07 G 2626 of the deceased and

death of deceased are all admitted facts. The first contention of the appellant is that the driver was innocent and Ex.A.2—sketch would show that the bus at the moment of the accident was on the extreme left side of the road indicating that bus driver was proceeding in the correct direction. I am afraid, this argument in the light of other facts is not correct. It is true that Ex.A.2—sketch would show that the bus was proceeding on its left side. However, that by itself, one cannot conclude that the driver was not at fault. The case of the claimants is that the bus hit the motorcycle of the deceased from the backside but not from the opposite side and this fact is not disputed by the appellants/Corporation. Thus it is clear that the deceased and bus were proceeding in the same direction and the bus was proceeding behind the deceased. In that view of the matter, merely because bus was shown on the left side of the road in Ex.A.2, one cannot conclude that bus driver was not responsible for the accident. Whether he drove the vehicle in a rash and negligent manner and caused the accident or not comes up for discussion. The answer is provided by PW.2, who was an eye witness to the accident and who lodged the FIR. PW.2 deposed that before accident himself and one Krishnaiah were proceeding from Nawabpet on his motorcycle and the deceased and one P.Kistaiah were proceeding on another motorcycle and when they reached in front of R & B Guest House at Jadcherla, at that time the offending bus came from backside being driven by its driver at high speed and in a rash and negligent manner and dashed the motorcycle of the deceased and thereby the deceased and pillion rider sustained grievous injuries and died on the spot and this witness saw the incident as he was at a visible distance from the motorcycle of the deceased. He also gave complaint to the Police of Jadcherla. Thus according to PW.2, the bus driver drove the vehicle in a rash and negligent manner and dashed behind the motorcycle of the deceased. This witness was thoroughly cross-examined but nothing useful could be extracted to impeach his credibility. In the cross-examination it was no doubt elicited that to reach Uddandapur, there is a crossing from highway road. This witness stated that they crossed the highway and proceeding

towards Jadcherla. It is not further elicited that at the point of crossing, the accident was occurred. Therefore, we cannot conclude that the accident took place just when the deceased and PW.2 came on to the highway road from side road of Uddandapur. So the evidence of PW.2 indicates that the bus driver was responsible for the accident. As rightly pointed out by the lower Tribunal, the RTC has not examined its driver or conductor or other passengers to buttress its claim that bus driver was innocent. In these circumstances, the Tribunal was right in resting liability on the bus driver. The contra argument in the appeal cannot be countenanced.

9) The next argument of the appellant is with regard to the alleged excessiveness of the compensation. I have gone through the award regarding the compensation awarded by the Tribunal, the deceased was a young person of about 26 years old and he was a private electrician by profession. The Tribunal fixed his monthly earnings as Rs.3,000/- and selected '16' as multiplier and accordingly computed compensation at Rs.4,42,000/- under different heads. I find no exorbitance in such fixation. Except harping that compensation is excessive, the appellant failed to show any instance where the compensation went high. Hence, I find no merits in the appeal.

10) In the result, this M.A.C.M.A filed by the APSRTC is dismissed by confirming the award passed by the Tribunal in O.P.No.497 of 2007. The appellants/APSRTC is directed to deposit the compensation amount within two(2) months from the date of this judgment, failing which execution can be taken out against them. No costs in the appeal.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 04.11.2015

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