

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.2928 of 2005

JUDGMENT:

The Respondents viz., Managing Director and Depot Manager of APSRTC of Macherla Depot, Guntur District, maintained the appeal against the award dated 02.11.2004 in O.P. No.1993 of 2002 on the file of XI Additional Chief Judge, City Civil Court (Fast Track Court) Hyderabad (for short 'the Tribunal'), which is maintained by three claimants, who are parents and younger brother of deceased by name Srisailam, unmarried, aged about 20 years, under Section 166 of Motor Vehicle Act, 1988 (for short 'the Act') for compensation of Rs.2,50,000/-.

2) Heard learned standing counsel for appellants/ APSRTC and learned counsel for respondents/ claimants. Perused the material on record.

3) A perusal of the award would show that while the deceased and two others were traveling in an auto, due to rash and negligent driving of driver of the bus of the 1st respondent, it dashed against the auto and the inmates, three in number, including the deceased died on the spot and the driver of the auto also died subsequently and thereby, the respondents are liable to compensate for the untimely death of deceased to the claimants. The RTC contested the matter saying that the seven seater auto overloaded with 10 passengers and while coming in opposite direction was trying to overtake the Tata Sumo and dashed against the bus proceeding in right direction, thereby it was the negligence of the auto driver for no fault of the bus driver of the respondents.

4) Before the trial Court, the driver of the bus was examined as RW.1. The 1st claimant and one of the eye-witnesses examined as PWs.1 and 2. Exs.A1 to A6 including FIR, Inquest report, Post mortem report, charge sheet and MVI report and panchanama of scene observation were marked.

5) The Tribunal having held that when both the vehicles were coming in opposite direction, the bus dashed the auto from the evidence on record including from cross examination of RW.1, who deposed that he saw the auto from a distance of 300 yards and the auto taken a left side meanwhile the bus dashed the auto, thereby not believed the evidence of RW.1 for the bus driver not even given a report much less by saying there is a tata sumo in between and while the driver of the auto overtaking the tata sumo, dashed the bus. Ex.A6—scene observation substantiates the claim of the petitioners and evidence of PW.2 that the bus driver was at negligence. Thus, mere overloading of the auto no way leads to the incident much less it comes to the benefit of APSRTC to contest, therefrom. If at all there is any contribution by the auto driver also, the remedy is left open to the APSRTC to proceed separately. Further non-impleadment of the auto driver or owner or insurer, no way exonerated the APSRTC from the liability.

6) Having regard to the above, for this Court while sitting in appeal there is nothing to interfere including on the quantum or on the liability but for to reduce the rate of interest from 9% per annum to 7.5% per annum as per the Apex Court's expressions in ***T.N.Transport Corporation vs. Raja Priya***^[1] and ***Rajesh vs Rajbir Singh***^[2], from the date of claim petition till realization.

7) Accordingly and in the result, the appeal is partly allowed by confirming the quantum of compensation awarded by the Tribunal and reducing the rate of interest from 9% per annum to 7.5% per annum from the date of claim petition till realisation. In other respects the award of the Tribunal holds good. No order as to costs.

8) Consequently, miscellaneous petitions, if any pending in this Appeal shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.15.07.2016

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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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- [\[1\]](#) 2005(6) SCC 236
[\[2\]](#) 2013 ACJ 1403