

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.2585 of 2009

JUDGMENT:

Aggrieved by the Award dt:11.04.2008 in O.P.No.440 of 2007 passed by the Chairman, M.A.C.T-cum-V Additional District Judge (Fast Track Court), Ananthapur (for short 'the Tribunal'), the respondent-APSRTC preferred the instant MACMA.

2) The factual matrix of the case is thus:

a) On 06.08.2007, the deceased—Chandrasekhar Reddy, was driving the auto bearing No.AP 02 W 2262 along with four passengers to go to Tirupathi and when the auto reached near Ravivenkatam Palli Village, one RTC bus bearing No.AP 10 Z 8631 being driven by its driver in a rash and negligent manner, dashed the auto, thereby, the deceased received injuries and died on the spot. It is averred that accident was occurred due to rash and negligent driving by the driver of the APSRTC bus. On these pleas, the claimants filed O.P.No.440 of 2007 under Section 166 of Motor Vehicles Act, 1988 (for short "the Act") against respondent—APSRTC and claimed Rs.4,00,000/- as compensation.

b) The respondent/APSRTC contested the matter and filed counter denying all the material averments and urged to put the claimants in strict proof of the same. Respondent further contended that petition is not maintainable for non-joinder of necessary parties i.e. owner and insurer of auto and also driver of APSRTC. It further contended that accident was occurred due to the fault of deceased himself. Finally, it contended that

the claim is highly excessive and exorbitant and thus prayed to dismiss the OP.

c) During trial, PWs.1 and 2 were examined and Exs.A1 to A3 were marked on behalf of claimants. RW1 was examined and no documents were marked on behalf of respondent—RTC.

d) The lower Tribunal on appreciation of both oral and documentary evidence awarded total compensation of Rs.2,78,300/- with costs and interest @ 7.5% p.a. against respondent/APSRTC under different heads as follows:

Loss of dependency	Rs.2,68,800/-
Loss of consortium	Rs. 5,000/-
Funeral expenses	Rs. 2,000/-
Loss of estate (amenities)	Rs. 2,500/-

Total	Rs.2,78,300/-

Hence, the appeal by APSRTC.

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

4) Heard arguments of Sri Aravala Rama Rao, learned Standing Counsel for APSRTC/appellant and Sri I.Venkata Prasad, learned counsel for respondents/claimants.

5a) Challenging the award learned Standing Counsel for APSRTC/ appellant firstly contended that the accident was occurred due to fault of the deceased himself as he overloaded the auto and drove the vehicle in a rash and negligent manner and dashed the bus and therefore the Tribunal ought to have concluded that the deceased was responsible for the accident and thus dismissed the O.P.

b) Secondly, learned counsel argued that Tribunal awarded excessive compensation. The Tribunal took the income of deceased at Rs.2,100/- per month without there being any evidence that the deceased was earning Rs.72/- to 80/- per day. In view of the same, compensation was increased drastically, learned counsel thus prayed at the first instance to exonerate the appellant—RTC from the liability and alternatively to reduce the compensation.

6) Per contra, learned counsel for respondents/claimants supported award and prayed to dismiss the appeal.

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

“Whether the compensation awarded by the Tribunal is just and reasonable or needs interference?”

8a) **POINT:** The accident, involvement of auto bearing No.AP 02 W 2262 and RTC bus bearing No.AP 10 Z 8631 and death of deceased are not in dispute. The bone of contention is quantum of compensation.

9) The first contention of appellant is that the driver of the RTC bus was not responsible for the accident and on the other hand, the deceased being the driver of the auto, himself liable for the accident as he drove the vehicle with a loading of four passengers. In this context, a perusal of the award shows that the claimant examined PW.2—who is an eye witness to the accident and reported to the police. He is an independent witness. He deposed that on 06.08.2007, he along with three other passengers was traveling in the auto driven by the deceased and the deceased drove the auto on the left side of

the road and when they reached near Ravivenkatam Palli Village and proceeding left side of the road at the time of accident, the offending bus being driven by its driver in a rash and negligent manner came in an opposite direction and dashed against the auto and thus caused the accident. It clearly shows that the accident took place only due to the rash and negligent driving by the driver of the bus. Though PWs.1 and 2 were cross examined but nothing specific was extracted to discredit their evidence. PW.2 is an independent witness and his evidence with regard to the manner of occurrence of accident could be believed. The 1st respondent was examined as RW.1, who is the conductor of RTC bus. He deposed that when the bus reached Ravivenkatam palli Village an auto came in the opposite direction with a load of passengers at high speed and vehicle went in a zig zag manner and its driver lost control over the auto and dashed against the bus. He deposed as if the driver of the bus was driving the vehicle in slow manner and observing the public and hence he was not responsible for accident. In the cross examination, he admitted that police registered the case against 1st respondent. He admitted that the police examined him and recorded his statement wherein he stated that accident was occurred due to negligence of bus driver. Hence, a perusal of his evidence clearly shows that earlier he gave statement as if the bus driver was at fault while giving evidence, he turned around and stated as if the bus driver is innocent. Hence his evidence can be discarded. The tribunal rightly rejected the evidence of RW.1 and believing PW.2 held that the accident was occurred due to fault of the bus driver. The said finding in my considered view was correct.

10) The next contention of appellant is that the Tribunal erred

in taking the monthly income of the deceased at Rs.2,100/-. I find no force in the said argument. The deceased was working as auto driver on hire. Hence, he can easily earn Rs.70/- to 80/- per day at the time of accident. The trial Court rightly fixed his income at Rs.2,100/- per month and there is no exorbitance in it.

11) In the result, I find no merits in the appeal and accordingly, the MACMA is dismissed by confirming the award passed by the Tribunal in O.P.No.440 of 2007. No costs in the appeal.

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

U.DURGA PRASAD RAO, J

Date: 10.03.2016

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HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

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