

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1978 of 2009

JUDGMENT :

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act"), is preferred by the appellants-petitioners, aggrieved by the order and decree dated 02.05.2006, passed in M.V.O.P.No.384 of 2004 by the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge (Fast Track Court), Ongole, Prakasam District (for brevity "the Tribunal"), dismissing the claim petition filed by them, under Section 166 of the Act, claiming compensation of Rs.1,00,000/-, on the ground that Ex.A.2 – Copy of Post Mortem Certificate does not disclose any fracture to the spinal cord of the deceased, thereby indicating that there is no negligence on the part of the bus driver belonging to respondent – erstwhile A.P. State Road Transport Corporation.

2. The claim petition was originally filed by the deceased, while he was alive, as his death has taken place 20 days after the accident, and subsequently, his wife and daughter came on record as his legal representatives.

3. The appellants herein are claim petitioners and the respondent – Corporation is respondent in M.V.O.P.No.384 of 2004. For the sake of convenience, the parties are referred to

as they were arrayed in M.V.O.P.No.384 of 2004 before the Tribunal.

4. The fact-situation leading to the death of the deceased, in brief, is that on 28.09.2004, the deceased – Chodagiri Bhaskara Rao, in order to send his daughter and son-in-law to his son-in-law's place, boarded along with them, the bus bearing No.AP 9Z 6754 to go to Yelurivaripalem and when the said bus reached Cherlogudipadu at 7.00 p.m., since the driver of the bus applied sudden brakes, the deceased, who was sitting in the front single seat, fell on the vacant place in front of the seat, as a result of which, he received injury to his spinal cord, legs and hands. The police concerned registered a case in Crime No.65/2004 under Section 337 IPC against the driver of the offending bus and the deceased was immediately shifted to the Government Hospital, Ongole, and suffered permanent disability and, therefore, sought a sum of Rs.1,00,000/- towards compensation.

5. The said claim was resisted by the respondent – Corporation by filing counter.

6. The Tribunal has framed three issues. During enquiry, the 2nd petitioner, who is the wife of the deceased, besides examining herself as P.W.1, examined one Kanumuri Prasad, who was the son-in-law of the petitioner No.2 and the deceased, as an eye witness, and marked Exs.A.1 to A.3. On

behalf of the respondent – Corporation, the driver of the offending bus was examined as R.W.1 and no document was marked.

7. The Tribunal, having discussed elaborately the evidence on record, on issue No.1, recorded a finding against the petitioners on the premise that Exs.A.1 and A.2, which are attested true copy of FIR in Crime No.65/2005 of S.N. Padu Police Station and attested true copy of Post Mortem Certificate of the deceased, respectively, do not disclose any fracture to the spinal card of the deceased and, therefore, no negligence can be inferred on the part of the driver of the bus. However, on issue No.2, though, the Tribunal has applied the structural formula and assessed the earnings of the deceased as Rs.50/- per day or Rs.1,500/- per month and taken his age as 55 years, as on the date of death, and after deducting 1/3rd towards his personal living expenses, taken the reminder Rs.1000/- towards contribution to the family and after applying the multiplier '8', arrived at a sum of Rs.96,000/- ($\text{Rs.1,000/-} \times 8 \times 12 = \text{Rs.96,000/-}$), however, did not grant any amount towards compensation to the petitioners, in view of the finding recorded on issue No.1, and thereby dismissed the claim petition. Aggrieved by the same, the petitioners have filed the present appeal.

8. Heard Sri M. Subba Reddy, learned counsel for the appellants – petitioners, and Sri P. Durga Prasad, learned Standing Counsel for the respondent – Corporation.

9. Perused the order under challenge and evidence available on record.

10. The short question involved in the instant appeal is, whether any negligence can be attributed to the driver of the R.T.C. Bus, who examined himself as R.W.1?

11. A perusal of evidence of R.W.1 shows that the deceased boarded the bus at Ongole to go to Yelurivaripalem and sat in the front seat of the bus, while the driver of the bus was driving the bus, and when it reached N.S.P. Canal of Borapalli village and when the bus climbed the road, which was steep and while it was coming down, there was a slope and suddenly a herd of wild boars crossed the bus, then he stopped the bus slowly and as the deceased was suffering from sugar and B.P., suddenly slid from the seat to the floor of the bus, but did not receive any injuries and he was not responsible for sliding of the deceased from his seat to the floor of the bus and, therefore, the Corporation is not responsible to pay compensation. However, he admits in his cross-examination that he was charge-sheeted and attending the Criminal Court.

12. The above evidence of R.W.1 was believed by the Tribunal, which, *ex facie*, reflects that the Tribunal extrinsically examined the evidence of R.W.1 and failed to intrinsically view what has been deposed by the witness. The very fact that when the driver of the bus applied sudden break, the bus was moving towards steep slope, having already climbed the height, and even the very fact that a herd of wild boars suddenly crossed the road would give an inescapable inference that R.W.1 invariably would have applied the breaks, suddenly, but not slowly, as asserted by him in his evidence, and the impact of such sudden break was the result of the deceased sliding down from his seat to the floor of the bus, which caused injuries to his person. Thus, the Tribunal went wrong in properly appreciating the evidence of R.W.1 and, somehow, tendered an incorrect finding on issue No.1.

13. This apart, the Tribunal observed that Ex.A.2 – Post Mortem report does not show any fracture to the spinal column of the deceased. The opinion tendered by the Doctors in Ex.A.2, as to the cause of death of the deceased, was due to Malnutrition, Bedsores, Septic Cuba due to longstandingly patient bedridden due to quadriplegia. The injuries described in Ex.A.2 also show that, so far as spinal card is concerned, the Doctor found Granulations on the survical card. That has been the noting of the Doctor, in which case, the Tribunal

ought not to have held that there was no injury, at all, to the survival card. Thus, on two vital aspects, the Tribunal deviated from the evidence on record, particularly the evidence of R.W.1. Therefore, the said finding recorded by the Tribunal is liable to be set aside and accordingly, the same is set aside.

14. In consequence, the petitioners are entitled to the compensation of Rs.96,000/-, as determined by the Tribunal. Further, no amount was awarded by the Tribunal towards conventional sum. Therefore, the compensation of Rs.1,00,000/-, as prayed for by the petitioners, is granted with interest @ 7.5% per annum, from the date of the petition till the date of realisation.

15. Accordingly, the Civil Miscellaneous Appeal is allowed, awarding compensation of Rs.1,00,000/- (Rupees one lakh only) with interest @ 7.5% per annum, from the date of the petition till realisation. No order as to costs.

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

JUSTICE A. SHANKAR NARAYANA

15.09.2016.
Msr

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