

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

C.M.A.No.4553 OF 2004 & M.A.C.M.A.No.1566 OF 2005

COMMON JUDGMENT:

These two appeals are being disposed of by this common judgment, as they arise out of a same accident.

2. C.M.A.No.4553 of 2004 was filed by the A.P.S.R.T.C. challenging the award in O.P.No.61 of 2002 dated 29.7.2004 whereas M.A.C.M.A.No.1566 of 2005 was filed by the claimants seeking enhancement of the compensation.

3. The facts leading to the filing of O.P.No.61 of 2002 before the Motor Vehicle Accidents Claims Tribunal-cum-I Additional District and Sessions Judge, Karimnagar are that one Sardar Kirpal Singh (hereinafter, referred to as "the deceased") was coming to Sikhwadi from Kaman road on a Hero Honda Motor Cycle on 9.8.2001. When he was coming on the motor cycle, a R.T.C. Bus bearing No.AP-9-Z-8301 of Karimnagar Depot, driven by its driver in a rash and negligent manner, dashed against him in front of Raghunandan Eye Hospital, Karimnagar as a result of which, he fell down and sustained bleeding injuries and died on the spot. It is alleged that the deceased was an employee on a lorry and drawing an amount of Rs.3,000/- per month. He was unmarried at that time.

4. The said case of the claimants is contested by respondent No.2 by filing a counter and the same was adopted by respondent No.1 before the Tribunal. In the counter, it was

alleged that the deceased himself was responsible for causing the accident and that if any accident occurred, the bus could not have been allowed to move from the accident spot.

5. On the basis of the pleadings, the Tribunal framed the following issues:

- “1) Whether the accident had occurred due to rash and negligent driving of the bus bearing No. AP-9-Z-8301 by the R.1?
- 2) Whether the petitioners are entitled to recover compensation and if so, to what amount and from whom?
- 3) To what relief?”

6. Before the Tribunal, P.Ws.1 to 3 were examined on behalf of the claimants and exhibits A-1 to A-10 were marked. On behalf of the respondents, R.Ws.1 and 2 were examined and Ex.B-1 was marked.

7. P.W.1 is petitioner No.1 whereas P.W.2 is an eye witness. P.W.3 is stated to be the owner of the lorry where the deceased was alleged to have been employed. In the charge sheet filed by the police, it was recorded that the driver of the vehicle, when interrogated, admitted the commission of the offence. Taking the above facts into consideration, the Tribunal held that the accident occurred due to rash and negligent driving of the R.T.C. Bus bearing No.AP-9-Z-8301 by respondent No.1 – driver before the Tribunal.

8. In view of the consideration of the said evidence on record, this Court is not inclined to consider the grounds raised

by the A.P.S.R.T.C. in C.M.A.No.4553 of 2004 with regard to the involvement of the R.T.C. Bus in the accident.

9. Since M.A.C.M.A.No.1566 of 2005 was filed seeking enhancement by the claimants, the award of the Tribunal has to be examined in the light of the evidence before it.

10. The claimants are the parents, brothers and sister of the deceased. Admittedly, the deceased was unmarried. It was alleged that he was working as a Driver in a lorry belonging to P.W.3. As per Ex.A-8 – S.S.C. Memo, the date of birth of the deceased is 26.2.1982. No evidence was placed before the Tribunal with regard to the employment of the deceased except the oral testimony of P.W.3. Even a valid driving license possessed by the deceased was not filed. In these circumstances, the acceptance of the evidence of P.W.3 without any corroboration and registers with regard to the payment of salary by the Tribunal appears to be not correct, but the deceased was aged about 19 years as on the date of the accident on 9.8.2001. In the inquest report, it was recorded that he was a student. In order to get compensation, P.W.3 appears to have been introduced and he stated that he employed the deceased as his driver. Though P.W.3 owns a vehicle, it does not itself show that the deceased was employed with him. Ex.A-9 – Memorandum of Marks of Intermediate show that the deceased appeared for intermediate examination on 4.8.2001 whereas the accident occurred on 9.8.2001. In the circumstances, it has to be held that the deceased was not employed on the date of the accident. Since the deceased has

a potentiality to employ himself in some avocation, in view of the decisions of the Hon'ble Supreme Court, a lumpsum amount of Rs.2,00,000/- can be awarded for his death. Since petitioner Nos.1 and 2 lost their love and affection of the deceased, they can be awarded an amount of Rs.20,000/- towards love and affection and Rs.10,000/- towards funeral expenses. Thus, the award dated 29.7.2004 passed by the Tribunal for an amount of Rs.1,93,000/- is enhanced to Rs.2,30,000/- and the enhanced amount of compensation shall carry interest at 9% per annum.

11. Accordingly, the appeal in M.A.C.M.A.No.1566 of 2005 is partly allowed and the appeal in C.M.A.No.4553 of 2004 is dismissed. There shall be no order as to costs.

12. Miscellaneous Petitions pending, if any, in these appeals shall stand closed.

JUSTICE A.RAMALINGESWARA RAO

Date: 25.1.2016

AMD

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THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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