

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A. No.254 OF 2010

JUDGMENT:

The 2nd respondent—RTC among two respondents including driver of bus bearing No.AP 11 Z 2373, maintained the appeal against the award passed on 17.06.2009, in O.P. No.187 of 2008 on the file of Chairman, Motor Accidents Claims Tribunal-cum-Judge, Family Court-cum-Additional District Judge, Karimnagar (for short 'the Tribunal') which was maintained by the claimants, who are none other than wife, major son, married daughter, son-in-law and mother of deceased aged about 49 years as per Ex.A5—post mortem report, under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), for a compensation of Rs.4,00,000/-, for the accidental death of injured in the motor accident occurred on 26.01.2008. While he was proceeding on bullock cart, it was dashed from backside by bus driven by 1st respondent belonging to 2nd respondent in a rash and negligent manner with high speed, as a result, the deceased fell down from the bullock cart and succumbed to injuries. From the contest of RTC, the Tribunal, having held that the accident was the result of driver of the bus, awarded Rs.4,09,500/- with interest at 7.5% per annum by fixing joint liability against respondents 1 and 2.

2) Heard learned standing counsel for appellant and learned counsel for respondents. Perused the material on record.

3) It is the contention of the learned standing counsel for APSRTC that the Tribunal gravely erred in taking the earnings of the deceased at Rs.4,500/- per month and arrived the compensation even beyond the claim. There is ill appreciation of evidence with regard to the alleged accidental death due to the negligence of the bus driver and

thereby prayed to allow the appeal. Whereas it is the contention of the learned counsel for the respondents/ claimants that the award of the Tribunal holds good and for this Court while sitting in appeal there is nothing to interfere and hence to dismiss the appeal.

4) From a perusal of Ex.A6—MVI report, it is clear that front left side windshield broken, front bumper damaged and front pressed on. The evidence of RW.1 shows that he noticed the bullock cart when he was at a distance of one furlong and he slowed down the bus and as the bullock cart was moving in the middle of the road in front of the bus, he blowed horn, due to which the bullocks frightened and they got themselves released from the cart and ran away into the fields, and the person who was proceeding in the bullock cart jumped out of the bullock cart resulting in injuries and succumbed to injuries. As per Exs.A1 and A3—FIR and charge sheet and from the evidence of PW.2, who is an eye witness to the accident, the bus coming from behind, dashed the bullock cart, as a result the deceased fell down on the road and the bus passed over him. Thus, it is clear that there is sheer negligence on the part of the bus driver, as held by the Tribunal, and the order of the Tribunal no way requires interference from re-appreciation.

5) Now, coming to the quantum of compensation, Ex.A5 and Ex.A2 P.M.E report and inquest panchanama respectively, show the age of the deceased as 49 years. Though it is suggested to PW.1, who is the 2nd claimant that the deceased was aged about 60 years, did not file any documentary evidence to prove the age of the deceased, thereby in the absence of proof of age, the age of the deceased can be taken above 50 years, for the multiplier between 51-55 to adopt 11; PW.1 is shown as 21 years and 3rd claimant is married daughter and 4th claimant is

her husband, all the three claimants are not dependants on deceased, 1/3rd to be deducted towards personal expenses; so far as the earnings of the deceased from the cultivation of Ac.6.00 gts of land from Exs.A7 and A8—pattedar passbook of Ramidi Raji Reddy and true copy of pahani for the year 2006-07 respectively, what he lost is only supervising cultivation and he cannot be treated as skilled labourer and as the accident was occurred on 21.06.2008, the Tribunal taken the earnings of the deceased at Rs.4,500/- per month but it can be taken only Rs.4,000/- per month, if same is taken and after 1/3rd deducted towards personal expenses, it comes to Rs.2,667/- per month and the loss of dependency comes to Rs.3,52,000/- (Rs.2,667/- X 12 X 11). Apart from it, Rs.50,000/- towards loss of consortium, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss of estate, in all it comes to Rs.4,37,000/- is the just compensation to which the claimants are entitled to and what the Tribunal awarded of Rs.4,09,500/- is no way excessive.

6) Accordingly and in the result, the appeal is dismissed confirming the award passed by the Tribunal. No order as to costs.

7) Consequently, Miscellaneous petitions, if any pending in this appeal, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.10.11.2016
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Date:10.11.2016

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