

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO
M.A.C.M.A.No.3838 of 2009

JUDGMENT:

Aggrieved by the Award dated 01.09.2008 in M.V.O.P.No.38 of 2006 passed by the Chairman, M.A.C.T-cum-IV Additional District Judge, Tirupati (for short “the Tribunal”), the respondent in OP/APSRTC preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of the claimants is that on 28.06.2006 at about 3.30 PM, while the deceased—Rama Raju was proceeding on his motorcycle bearing No.AP 03 M 9907, a RTC Bus bearing No.AP 10 Z 5476 being driven by its driver at high speed and in a rash and negligent manner, came in opposite direction and dashed the motorcycle. In the resultant accident the deceased received multiple injuries and immediately he was shifted to Government Hospital, Chittoor and he lost his breath on 09.07.2006 while undergoing treatment. On these pleas, the claimants filed M.V.O.P.No.38 of 2006 under Section 166 of Motor Vehicles Act, 1988 (for short “M.V.Act”) and claimed Rs.20,00,000/- as compensation against respondent/APSRTC.

b) Respondent/RTC filed counter denying all the material averments made in the petition and urged to put the claimant to strict proof of the same. It contended that the alleged

accident was occurred not due to rash and negligent driving of the driver of RTC bus but due to the negligence of the deceased himself as he drove the motorcycle while talking in cell phone and in an intoxicant state. Respondent contended that the compensation claimed is highly excessive and exorbitant and thus prayed to dismiss the O.P.

c) During trial, PWs.1 to 4 were examined and Exs.A1 to A12 were marked and Ex.C1 was exhibited on behalf of claimants. RW1 was examined on behalf of respondent.

d) The Tribunal having regard to the oral and documentary evidence awarded Rs.8,33,060/- as compensation with proportionate costs and interest at 7.5% p.a. against the respondent.

Hence, the appeal by APSRTC.

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

4) Heard arguments of Sri Aravala Rama Rao, learned counsel for appellant/APSRTC and Sri K.Maheswara Rao, learned counsel for respondents/claimants.

5a) Challenging the award, learned counsel for appellant/APSRTC firstly argued that the Tribunal grossly erred in holding that bus driver was at fault. The cogent evidence of RW1 would clearly show that the deceased drove the motorcycle in a rash and negligence manner and added to

it, he was talking in cell phone and he was in intoxicant state and he himself went and dashed the right side bumper of the bus and therefore, fault lies with the deceased alone. Learned counsel argued that on this finding the Tribunal ought to have dismissed the OP.

b) Nextly, regarding the quantum of compensation, he argued that the Tribunal wrongly accepted the income of the deceased at Rs.6,613/- per month though there is no reliable evidence in that regard.

c) He also contended that the Tribunal was not right in accepting '15' as multiplier basing on the age of the mother of the deceased though there was no reliable documentary evidence to establish that her age was 43 years. He thus prayed to allow the appeal and re-assess the compensation.

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

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

"Whether the award passed by the Tribunal is factually and legally sustainable?"

8a) **POINT:** The accident, involvement of motorcycle bearing No.AP 03 M 9907, RTC Bus bearing No.AP 10 Z 5476 and death of deceased are admitted facts. The main contention of the appellant/RTC is that bus driver was not responsible for the accident and deceased himself was at fault as he drove

the motorcycle in a rash and negligent manner, in a drunken state and also by talking in cell phone. In this case, the record shows that police laid charge sheet against the bus driver. The claimants examined PW4 to prove the guilt of bus driver whereas RTC examined its driver as RW1 to establish the fault of deceased. PW4 claims that he witnessed the accident which took place near Nendragunta on Tirupati—Chittoor main road. Giving reasons for his presence in the place of accident, he stated that himself and his friend stopped at Sri Venkateswara Swamy temple in Nandragunta on Tirupati—Chittoor main road due to rain and thus witnessed the accident. According to him, he noticed that the bus came there from Tirupati to Pakala side and the driver turned the bus to extreme right side without giving any signal to the opposite coming vehicles and as a result the bus dashed against the vehicle of the deceased. He asserted the bus driver was at fault. It may be noted that PW4 was referred as inquest witness but not as direct eye-witness in the charge sheet. In that view of the matter, he cannot be believed to be an eye-witness. So, charge sheet alone can be taken on claimants' side to establish the guilt of bus driver.

b) Coming to respondent, the bus driver was examined as RW1. His version was that the accident took place near Nandragunta on Tirupati—Chittoor main road and place of accident was a junction. He was driving the bus slowly because there was a speed breaker before taking the right

turn. He told that while taking turn towards North, two wheeler came from Chittoor side and the rider of the two wheeler was talking on his cell phone. On seeing him, he stopped the bus but in spite of it the motorcyclist went and dashed the bumper of the bus. He stated that rider and pillion rider were in drunken state. He thus stated that rider of the motorcycle was responsible for the accident. He claimed that criminal case filed against him was ended in acquittal.

c) RW1 did not produce copy of judgment showing that he was acquitted in the criminal case. RTC has not examined any independent witness i.e. passengers in the bus to prove the innocence of the bus driver. RW1 is an interested witness. As such, his evidence cannot be accepted as gospel truth. So, in the ultimate analysis charge sheet is the only reliable document to decide the guilt as per which the bus driver was at fault. Hence, the appellant/RTC cannot harp that the Tribunal committed error in fixing liability on the bus driver.

9) Then compensation is concerned, the Tribunal basing on the evidence of PW2 and Ex.A11—appointment letter and Ex.A12—salary slip rightly accepted the salary of the deceased as Rs.6,613/- per month. Hence, the appellant cannot blame the Tribunal.

a) Then the Tribunal basing on the age of the first claimant—mother of the deceased as 43 years, selected '15' as multiplier. In my view, the said fixation is incorrect. As per the

decision of the Apex Court in **Smt. Sarla Verma v. Delhi Transport Corporation**^[1], '14' is the correct multiplier for the persons in the age group of 41 to 45 years. Therefore, '14' is fixed as multiplier in the instant case. Thus, compensation for loss of dependency comes to Rs.7,40,656/- (Rs.6,613/- x 12 x 14 x 2/3rd). Compensation awarded by the Tribunal under other heads is correct, in my view.

Thus, the total compensation payable to the claimant under different heads is as follows:

Loss of dependency	Rs.	7,40,656-00
Loss of estate		Rs.
15,000-00		
Funeral expenses	Rs.	2,500-00
Medicines and extra-nourishment	Rs.	20,000-00
Transport expenses	Rs.	2,000-00

Total	Rs.	7,80,156-00

At the outset, the compensation is reduced from Rs.8,33,060/- to Rs.7,80,156/- (Rs.52,904/-).

10) In the result, this MACMA is partly allowed and ordered as follows:

- a) The compensation is reduced from Rs.8,33,060/- to Rs.7,80,156/-(Rs.52,904/-).
- b) The respondent in the OP is directed to pay the

reduced compensation amount with proportionate costs and interest at the rate of 7.5% per annum from the date of OP till the date of realization within two (2) months from the date of this judgment, failing which execution can be taken out against it.

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

U. DURGA PRASAD RAO, J

Date: 01.06.2016
Murthy

[\[1\]](#) 2009 ACJ 1298 (SC)