

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

C.M.A.No.2485 of 2004

JUDGMENT:

Aggrieved by the Award dated 04.12.2003 in O.P.No.138 of 2001 passed by the II Additional Chief Judge, City Civil Court, Hyderabad, the respondent—APSRTC preferred the instant CMA.

2) The factual matrix of the case is thus:

a) On 12.09.2000 at about 11 AM, the deceased—Vasarla Venkateshwar Rao along with his friend—P.Nagaraju went to observe Ganesh Procession and after that when he was waiting at Panjagutta bus stop to board the bus, one RTC bus came and while he was boarding the bus, the driver drove the same in a rash and negligent manner and at high speed and thereby, the deceased fell down and the bus ran over him. Immediately he was shifted to Osmania General Hospital where he succumbed to injuries. It is averred that accident was occurred due to rash and negligent driving of the driver of the APSRTC bus. On these pleas, the claimants filed O.P.No.138 of 2001 under Section 166 of Motor Vehicles Act, 1988 (for short “the Act”) against respondent—APSRTC and claimed Rs.2,00,000/- as compensation.

b) The respondent/Corporation filed counter denying all the material averments and urged to put the claimants in strict proof of the same. They contended that deceased was responsible for the accident. They further contended that claimants have not mentioned the number

of the bus alleged to have been involved in the accident and hence Corporation is not liable to pay compensation. Finally, they contended that claim is highly excessive and exorbitant and prayed to dismiss the OP.

c) During trial, PWs.1 and 2 were examined and Ex.A1 was marked on behalf of claimants. No oral or documentary evidence was let in on behalf of respondent—Corporation.

d) The lower Tribunal on appreciation of both oral and documentary evidence awarded total compensation of Rs.1,94,000/- with costs and interest @ 9% per annum against respondent/APSRTC.

Hence, the appeal by APSRTC.

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

4) Heard arguments of Sri K.Harinath, learned counsel for appellants/ APSRTC and Sri T.Viswarupa Chary, learned counsel for respondents 2 to 3/claimants. Appeal against R1 dismissed for default.

5a) The main plank of argument of learned counsel for appellant/Corporation is that neither in the FIR nor in the claim petition the claimants mentioned the registration number of the bus allegedly involved in the accident and even in the evidence also they did not mention the same and therefore, it is highly doubtful whether the APSRTC bus at all involved in the accident. The Tribunal without

considering this aspect and in spite of the clear objection of the Corporation, wrongly fastened liability on the appellant/Corporation.

b) Nextly, arguing that Tribunal committed an error in computation of compensation, learned counsel pointed out that since the deceased was a bachelor, Tribunal ought to have deducted one-half instead of one-third from his gross earnings towards his personal and living expenses following the decision of the Apex Court in *Smt. Sarla Verma vs. Delhi Transport Corporation*¹, but the Tribunal deducted one-third and therefore, compensation was unduly escalated. He thus, at the first instance, sought for dismissing the claim application against the Corporation and alternatively to reduce the compensation suitably.

6a) Per contra, learned counsel for respondents/claimants while supporting the award contended that involvement of bus was amply established by PW2, who was the friend of the deceased and witnessed the accident and gave report to the police and according to whom, RTC city bus very much involved in the accident and merely because in the emergency situation he could not identify the registration of the bus, that cannot be a ground to contend as if the RTC bus was not at all involved in the accident. The Tribunal rightly fastened liability on the Corporation.

¹ 2009 ACJ 1298 (SC)

b) Nextly, defending the compensation awarded by the Tribunal, learned counsel argued award in the instant case was passed on 04.12.2003 by which time the judgment of the Apex Court in *Sarla Verma* (1 supra) was not pronounced and therefore, the Tribunal had no occasion to follow the said judgment wherein admittedly the Apex Court held that in case of death of bachelor 50% of his gross income has to be deducted towards his personal and living expenses. Learned counsel argued that though appeal is continuation of the original proceedings and the appellate Court may take notice of the subsequent change in law, on the issue involved in the appeal, still in the instant case there is no need to deduct one-half of the gross earnings of the deceased towards his personal expenses in which case compensation would be reduced drastically.

c) Learned counsel argued that in fact as per the decision reported in *N. Surender Rao vs. B. Swamy*², in case of death of bachelor, his age but not the age of his parents should be taken into consideration for fixation of multiplier. If that decision were to be followed, the multiplier would have been higher than '16' which was fixed by the Tribunal basing on the age of the mother of the deceased. In such a case, compensation would have been more than the awarded amount of Rs.1,94,000/-. Learned counsel further argued since the claimants have not preferred any appeal, they may not be entitled to seek for enhanced compensation, but still they can defend the compensation

² 2014 (1) ALT 512

awarded by the Tribunal showing that what was already awarded was in fact a lower compensation. He thus submitted that there is no need to revise and reduce the compensation.

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

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

8) **POINT**: Accident and death of deceased—V.Venkathshwar Rao are not in dispute. So far as involvement of RTC city bus is concerned, it is true that in claim petition the claimants except mentioning that RTC city bus going in the route of Panjagutta was involved in the accident, did not mention its registration number. Therefore, the appellant challenges the very involvement of any RTC bus at all. I am unable to subscribe this contention.

a) PW2, who is the friend of deceased, avouches about the involvement of RTC bus in the accident. He deposed that on 12.09.2000 himself and deceased went to witness the Ganesh Nimmajanam (Immersion) at Tank bund and after that they both wanted to go to Yousufguda and therefore, they waited for bus at Eenadu bus stop in Somajiguda and at that time one RTC bus came and deceased boarded the bus and immediately the driver started the bus in a rash and negligent manner and thereby the deceased fell down and left rear wheel ran over him causing grievous injuries. This witness shifted the deceased to NIMS and after some time he again

shifted to Osmania General Hospital and the deceased succumbed to injuries on the next day. In the cross-examination he stated that at the time of accident he was standing at the Eenadu bus stop, Somajiguda; himself and deceased and another person were waiting for bus to go to Yousufguda. He admitted that he cannot give bus number. He stated that bus was full of passengers and hence some commuters were standing on the foot-board. He denied the suggestion that there was no negligence on the part of bus driver. He stated deceased received injuries when left rear tyre ran over him. He stated that he himself given compliant in the police station.

b) When the evidence of PW2 is analyzed, the notable feature is that though Corporation contended as if no RTC bus was involved in the accident, such a suggestion was not given to PW2. There can be no doubt that PW2 is an eye-witness to the accident, as he himself admitted the deceased in the hospital and gave report to police on the next day after the death of the deceased. His evidence clearly depicts that one RTC city bus going in Somajiguda route was very much involved in the accident. PW2 cannot be found fault for not mentioning the registration number of the bus, as understandably he was in a hurry to rush the deceased to the hospital. When the facts are taken into consideration, it can be emphatically stated that one of the buses of appellant/Corporation which was proceeding in Somajiguda route, was involved in the accident and therefore, the Tribunal rightly fastened liability on the Corporation.

c) Coming to quantum of compensation, the Tribunal, it appears, taking the income of the deceased at Rs.1,500/- per month, deducted $\frac{1}{3}^{\text{rd}}$ therefrom and thereafter by selecting '16' as multiplier basing on the age of his mother as 40 years, arrived loss of dependency Rs.1,92,000/-. The award was passed on 04.12.2003 and the judgment in *Sarla Verma* was pronounced by the Honourable Apex Court on 15.04.2009 and therefore, the Tribunal had no occasion to deduct one-half from the gross earnings of the deceased as ordained in the aforesaid judgment. Be that as it may, in view of the fact that the deceased has three dependants, out of whom one dependent is his unmarried sister and further, the lower Tribunal has not taken the age of the deceased for selection of multiplier, thereby the compensation was already reduced, this Court is not inclined to revise the compensation by deducting one-half from the gross earnings as argued by the appellant. Hence, at the outset, I find no reasons to interfere with the award which is legally and factually sustainable.

9) In the result, this appeal is dismissed by confirming the award passed by the Tribunal. No costs.

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

Date: 20.12.2016
Murthy

U.DURGA PRASAD RAO, J