

HON'BLE SRI JUSTICE S. RAVI KUMAR

M.A.C.M.A.No.147 of 2013

JUDGMENT:

This appeal is preferred against judgment dated 21.07.2011 in O.P.No.87 of 2009 on the file of Motor Accident Claims Tribunal-cum-VI-Additional District Judge (Fast Track Court), Nizamabad at Kamareddy (for short, 'Tribunal').

2. First respondent herein submitted claim petition under Section 166(1) of the Motor Vehicles Act, 1988, claiming compensation of Rs.5,00,000/-, for the death of her son Mettu Siddiramulu in a motor accident that took place on 07.05.2009 at about 2.00 p.m. near Srivalli Petrol Bunk, Bhiknoor Village, within the jurisdiction of Bhiknoor Police Station, Nizamabad District. According to claimant, on the fateful day the deceased along with M. Shyamraj went to Kamareddy for shopping on motor cycle bearing No.AP-23-N-3732 and at about 2.00 p.m. while they were crossing the road one APSRTC Bus bearing No.AP-28-Z-2408 came in a rash and negligent manner at high speed and dashed the motor cycle from behind, as a result, both the persons fell down from motor cycle, the deceased sustained head injury and died on the spot. Appellants herein resisted the claim of claimant on the ground that there is no negligence on the part of bus driver and the accident took place due to negligence of the deceased

himself and on these contentions, claims Tribunal conducted enquiry, during which two witnesses are examined and five documents are marked on behalf of claimant and one witness is examined i.e., bus driver, on behalf of appellants and on a overall consideration of oral and documentary evidence, claims Tribunal allowed the application in part and granted a sum of Rs.4,02,000/- with proportionate costs and interest at 7.5 % p.a. from the date of petition till the date of realization. Aggrieved by the same, APSRTC preferred the present appeal.

3. Heard both sides.

4. Advocate for appellants submitted that Tribunal failed to consider the evidence of RW.1, from which it is clear that the deceased himself was negligent who suddenly crossed the road, which was not visualized by the bus driver, therefore, there is no negligence on the part of bus driver and the compensation awarded by the claims Tribunal is totally erroneous. It is further submitted that the Tribunal grossly erred in assessing the income of the deceased at 125/- per day without any material evidence, therefore, compensation granted by the Tribunal is liable to be set aside.

5. On the other hand, advocate for claimants submitted though the claimant claimed Rs.5,00,000/- the Tribunal granted only Rs.4,02,000/- which is very meager and submitted if the calculation is made on the basis of notional income, the claimants would get more amount

and the claims Tribunal rightly applied multiplier '13' and that there are no grounds to interfere with the order of claims Tribunal.

6. Now the point that would arise for my consideration in this appeal is:

Whether the order dated 21.07.2011 in O.P.No.87 of 2009 on the file of Motor Accident Claims Tribunal-cum-VI-Additional District Judge (Fast Track Court), Nizamabad, is legal, proper and correct?

POINT :

7. There is no dispute that deceased M.Siddiramulu died in a motor accident on 07.05.2009. It is clear from the evidence that the deceased and the other person after filling fuel at petrol bunk while crossing the road, the bus bearing No.AP-28-Z-2408 came in a rash and negligent manner and dashed the two wheeler, which resulted the death of the deceased. Though appellants contended that the deceased and the pillion rider suddenly crossed the road, the same is not supported by any evidence, even RW.1 in his evidence did not whisper anything with regard to the sudden crossing and even in his chief-examination he only stated that deceased was negligent and crossed the road without observing the bus. When it is clear from the evidence that deceased just started from the petrol bunk, it cannot be said that he was proceeding at high speed. Further, a duty is also caste upon the bus driver to observe and proceed. As seen from the record,

police after due investigation filed charge sheet against the bus driver, fixing responsibility for the death of the deceased. It is not known what happened to the criminal case and if really the driver got acquitted, the appellants ought to have produced that judgment copy to support their version that there was no negligence on the part of the bus driver. But, from the evidence as available on record, it is clear that bus driver himself was negligent and the accident was only due to his rashness and claims Tribunal considering these aspects fixed the liability on the appellants. As seen from the record, the deceased was earning money as commission agent and taking the nature of work, Tribunal has fixed his earnings at Rs.125/- per day, which is very reasonable and the objection of appellants that the Tribunal has fixed this amount on guess work cannot be accepted. On a consideration of the material, I am of the view that Tribunal has not committed any error in appreciating the evidence on record and fixing the compensation by taking income of the deceased at Rs.125/- per day and the objection of the appellants-APSRTC is not tenable.

8. One of the argument of advocate for appellants is that deceased was bachelor, but the Tribunal has deducted $\frac{1}{3}^{\text{rd}}$ instead of deducting 50%. As seen from the material, the Tribunal has granted a very meager amount and if calculation is made by taking notional

income by deducting $1/3^{\text{rd}}$, it will workout nearer to the amount granted, it makes no difference. For these reasons, I am of the view that appeal is devoid of merits and liable to be dismissed.

9. Appeal is dismissed accordingly.

10. Miscellaneous petitions pending, if any, shall stand closed. No costs.

S. RAVI KUMAR, J

11th August 2016.

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