

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

M.A.C.M.A. No.12 of 2009

JUDGMENT:

Aggrieved by the Award dt:04.09.2008 in O.P.No.557 of 2006 passed by the Chairman, M.A.C.T-cum-District Judge, at Nizamabad (for short 'the Tribunal'), the claimants preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of the claimants is that on 26.05.2006 at about 8:00pm, while the deceased—Shaik Vaseemuddin along with others was travelling in an auto bearing No.AP 1 V 1911 from Nirmal towards Khanapur and the driver of the auto drove very slowly and cautiously and when the said auto reached the outskirts of Kondapur village on Nirmal to Mancherial road, one RTC bus bearing No.AP 09 Z 9024 being driven by its driver at high speed and in a rash and negligent manner, came in opposite direction and dashed against the auto and thereby the inmates of the auto fell down and the front wheel of the bus ran over the auto and the deceased. In the resultant accident, the deceased sustained grievous injuries and succumbed to injuries on 27.05.2006 while undergoing treatment at Gandhi Hospital, Secunderabad. It is averred that the accident was occurred due to rash and negligent driving by the driver of RTC bus. On these pleas, the claimants, who are parents of the deceased filed O.P.No.557 of 2006 under Section 166(1)(c) of Motor Vehicles Act, 1988 (for short "the Act") against respondents 1 and 2/APSRTC and claimed Rs.5,00,000/- as compensation.

b) Respondents 1 and 2 filed written statement denying the material averments made in the petition and contended that the accident was not occurred due to the rash and negligence on the part of the driver of the bus but due to the rash and negligent driving by the driver of the auto. They further denied the age, avocation and income of

the deceased. Finally, they contended that compensation claimed by claimants is excessive and thus prayed to dismiss the OP.

c) During trial, PWs.1 to 3 were examined and Exs.A1 to A7 were marked on behalf of claimants. RW.1 was examined and no documents were marked on behalf of respondents.

d) The Tribunal on appreciation of both oral and documentary evidence held that driver of the RTC bus was responsible for the accident and relying upon the decision of Apex Court reported in ***Kaushlya Devi vs. Karan Arora and others***^[1] has awarded lumpsum compensation of Rs.1,00,000/- against respondents 1 and 2 with proportionate costs and interest @ 9% p.a.

Hence, the appeal by claimants.

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

4) Heard arguments of Sri P.Radhive Reddy, learned counsel for appellants/claimants and Sri N.Vasudeva Reddy, learned Standing Counsel for APSRTC/respondents 1 and 2.

5) It is seen that the deceased was aged 6 years by the time of his death and not an earning member and relying upon the Apex Court's decision in ***Kaushlya Devi***'s case (1 supra), the lower Tribunal granted compensation of Rs.1,00,000/- which is being disputed by the appellants/claimants. Since the Tribunal relied upon the judgment of the Apex Court and correctly assessed the compensation, the same cannot be found fault. Sofaras the decision cited by learned counsel for appellants in ***New India Assurance Co. Ltd. vs. Satender and others***^[2] is concerned, it was factually different from the case on hand. It was a case of death of a 9 years old boy wherein the Apex Court arrived at compensation of Rs.1,80,000/-. In my considered view, the same cannot be

made applicable to the present case where the deceased was only a 6 years old boy. In these circumstances, I find no merits in the appeal.

6) Accordingly, this appeal is dismissed by confirming the Award dt:04.09.2008 passed by the lower Tribunal in O.P.No.557 of 2006. No order as to costs.

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

U. DURGA PRASAD RAO, J

Date: 21.06.2016
SCS

[\[1\]](#) AIR 2007 Supreme Court 1912

[\[2\]](#) AIR 2007 Supreme Court 324(1)