

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05-12-2017

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3303 of 2017
and CMP No.20854 of 2017

The Andhra Pradesh State
Road Transport Co. Ltd.,
Rep.by its Managing Director ..Appellant/Respondent

Vs

1. A.Bharathi
2. A.Rajesh Reddy .. Respondents8Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the award and decree dated 24.11.2016 passed by the Special Sub Judge, Special Court No.2, Motor Accident claims Tribunal, Chennai in MCOP No.3715 of 2014.

For Appellant : Ms.G.V.Shoba
For Respondents : Mr.K.Suryanarayanan

J U D G M E N T

This appeal has been filed against the award and decree dated 24.11.2016 passed by the Special Sub Judge, Special Court No.2, Motor Accident claims Tribunal, Chennai in MCOP No.3715 of 2014.

2. By consent of both the parties, this matter is taken up for final disposal at the admission stage itself.

3. The appellant herein is the respondent and the respondents are the claimants before the Tribunal in M.C.O.P.No.3715 of 2014. The respondents/claimants, as wife and son of the deceased filed the above claim petition claiming a sum of Rs.10,00,000/- as compensation for the death of the deceased who died in the accident that took place on 05.03.2014.

4. According to the respondents, on 05.03.2014, while the deceased was driving the Tractor bearing Regn.No.AP 03 AG 6639 along Vedurukuppam - Devalampeta Road, a bus bearing Regn.No.AP 29 Z 2390 belonging to the appellant Transport Corporation, driven by its driver in a rash and negligent manner, dashed

against the Tractor and caused the accident. In the said accident, the Tractor fell into a pit alongwith driver and the tractor rear wheel ran over the deceased. Thus, claiming compensation, the respondents filed claim petition before the Tribunal.

5. The appellant herein filed counter denying all the averments made by the respondents/claimants. It is contended that the deceased with a heavy load of mud was going ahead of the bus in the middle of the road without giving way to any other vehicles and without following road rules and regulations. Moreover, the tractor was overloaded and due to heavy load, he was unable to control the vehicle and when the tractor tried to go to the left side in order to give way to the appellant Corporation bus, the back portion of the tractor with the mud tilted down on the road and dashed on the appellant Corporation bus. It is further submitted that the deceased had no proper driving licence as well as permit to carry the mud. The insurance company of the tractor in which the deceased was travelling was not impleaded as parties and therefore the claim petition has to be dismissed on the ground of non-joinder of necessary parties.

6. Before the Tribunal, the second respondent was examined as P.W.1 and one P.Munishekar Reddy, eye-witness was examined as P.W.2. Seven (7) documents were marked as Exs.P1 to P7 on the side of the respondents/claimants. On the side of the appellant, the driver of the bus was examined as R.W.1 and xerox copy of the driving licence of R.W.1 was marked as Ex.R1

7. The Tribunal framed necessary points for consideration. On considering the pleadings, oral and documentary evidence, the Tribunal came to a conclusion that the accident took place only due to the rash and negligent driving of the driver of the bus and passed an order, fixing liability upon the appellant and directed them to pay a sum of Rs.10,51,800/- as compensation to the respondents/claimants.

8. Against the said award and decree dated 24.11.2016 made in MCOP No.3715 of 2014, the appellant has preferred the present appeal.

9. The learned counsel for the appellant would submit that the Tribunal erred in holding that the driver of the bus was solely responsible for the accident. The Tribunal failed to consider that the accident was due to the negligent driving of the driver of the Tractor and hence the Insurance Company of the tractor alone is liable to pay the compensation. The Tribunal also failed to note that the Insurance Company of the Tractor and the owner of the Tractor were not made as parties to the proceedings and hence the claim petition has to be dismissed for

non-joinder of necessary parties.

10. Per contra, the learned counsel appearing for the respondents/claimants submitted that the accident occurred only due to the rash and negligent driving of the driver of the bus belonging to the appellant/Transport Corporation. Further, the appellant has not adduced any independent evidence in order to prove the occurrence of the accident and prayed for dismissal of the appeal.

11. Heard the learned counsel for the appellant as well as respondents and perused the materials available on record.

12. The contention of the learned counsel for the appellant that the deceased only invited the accident is unsustainable and is contrary to the evidence of PW2, eye-witness to the accident. The respondents, in the claim petition have stated that the accident occurred only due to the rash and negligent driving of the drivers of the bus. As P.W.2 has deposed in his evidence that the driver of the bus alone was responsible for the accident, the tribunal, appreciating the evidence in proper and perspective manner, held that the driver of the bus is responsible for the accident. The tribunal has given a valid reason for fixing the negligence and liability on the driver of the appellant Corporation. Hence, there is no reason to interfere with the said finding.

13. From the materials on record, it is seen that the Tribunal has taken Rs.6,500/- as monthly income of the deceased as he was self-employed. After deducting 1/3rd towards personal expenses and adding 30% towards future prospects, awarded a sum of Rs.8,78,000/- towards pecuniary loss. However, as per the decision of the Constitutional Bench of Hon'ble Supreme Court in National Insurance Co. Ltd., v. Pranay Sethi and Others reported in 2017 ACJ 2700, only 25% has been added towards future prospects.

61. In view of the aforesaid analysis, we proceed to record our conclusions:-

- (i)
- (ii)
- (iii)

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10%

where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

14. In the present case, the deceased was aged 49 years at the time of accident. Hence, only 25% can be added towards future prospects. Thus, the amount awarded by the tribunal is reduced to Rs.8,45,000/- [Rs.6500x12=Rs.78000-1/3rd=Rs.52000+25%=Rs.65000x13 = Rs.8,45,000/-]. Similarly, the Tribunal has awarded a sum of Rs.1,00,000/- towards loss of consortium. Following the judgment of the Hon'ble Apex Court cited supra in National Insurance Co. Ltd., v. Pranay Sethi and Others, a sum of Rs.40,000/- under this head is reasonable. The Tribunal has awarded a sum of Rs.50,000/- for loss of love and affection. The said amount is reasonable one and is hereby confirmed. The Tribunal has also awarded a sum of Rs.10,000/- towards loss of expectation of life which is modified and awarded under the head "loss of estate". In all other aspects, the award of the Tribunal shall stand confirmed. Thus, the award of the Tribunal is modified to Rs.9,58,000/-, break-up as follows -

Srl.No.	Particulars	Amt. Awarded by the Tribunal - Rs.	Amt. modified by this Court - Rs.
1	Pecuniary Loss	8,78,800/-	8,45,000/-
2	Loss of consortium	1,00,000/-	40,000/-
3	Loss of love and affection	50,000/-	50,000/-
4	Loss of expectation of life	10,000/-	-
5	Loss of estate	-	10,000/-
6	Funeral expenses	10,000/-	10,000/-
7	Transportation to hospital	3,000/-	3,000/-
	Total	10,51,800/-	9,58,000/-

The rate of interest awarded by the Tribunal @ 7.5% from the date of petition till the date of deposit remains unaltered.

15. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous

Petition is closed.

16. The appellant is directed to deposit the entire amount awarded by this Court alongwith interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this order. On such deposit, the respondents/claimants are permitted to withdraw the modified award amount alongwith interest and costs, less the amount already withdrawn, if any, on the basis of apportionment fixed by the Tribunal.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rgr

To

The Special Sub Judge,
Special Court No.2,
Motor Accident Claims Tribunal,
Chennai

copy to
The Section Officer
VR Section High Court,
Madras-104

+1 cc to M/s.G.V.Shoba Advocate sr 86052

+1 cc to M/s.K.Suryanarayanan Advocate sr 85971

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