HON'BLE SRI JUSTICE M.S.K.JAISWAL

M.A.C.M.A.No.1309 of 2010

JUDGMENT:

The Andhra Pradesh State Road Transport Corporation (for short 'RTC') is the appellant. The appeal is preferred questioning the award dated 19.04.2010, passed in M.V.O.P.No.336 of 2009 by the learned Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Ongole (for short "the Tribunal"), by and under which, the Tribunal has determined the compensation payable to the respondents/claimants 1 & 2 at Rs.16,23,200/- as against the claim of Rs.30,00,000/-, but however, out of total compensation, directed the appellant-RTC to pay Rs.15,23,200/- and also directed the 3rd respondent-Insurance Company to pay Rs.1,00,000/- to the claimants for the death of the deceased D.Nagireddy in an accident said to have taken place on 23.02.2009 at about 7.30 p.m at Gatchu Kaluva bridge on the road proceeding from Podili towards Ongole.

The facts in brief are that on 23.02.2009 at about 7.30 a.m the deceased was proceeding along with one P.Venkateswarlu on the motorcycle bearing registration No.AP27-R2212, and when reached at Gastchu Kaluva bridge, when he tried to stop the motorcycle at the request of the pillion rider to attend his calls of nature, the offending bus came in opposite direction in a rash and negligent manner, without blowing horn, dashed the motorcycle of the deceased, as a result, the deceased sustained multiple injuries and died on the spot. The deceased was aged 45 years, he was hale and healthy by the time of accident, and he was working as LIC Agent, Chairman, Club Member and earning Rs.26,000/- per month.

During course of trial, on behalf of the claimants, the 1st claimant examined herself as PW 1 and examined the eyewitness as PW 2 and also examined PW 3 to speak about the income of the deceased, and got marked Exs.A1 to A11. On behalf of the respondents, RW 1, who is the driver of the offending bus, was examined and on behalf of the Insurance Company, RW 2 was examined and Exs.B1 to B3 were marked.

The Tribunal having taken into consideration the entire oral and documentary evidence, held that the accident took place due to rash and negligent driving by the driver of the RTC bus, but however, taking into consideration the evidence on record, held that the deceased also contributed to the accident by going on the road towards right side, where he was not supposed to do and apportioned the liability of the contributory negligence on the deceased @20%, and since the motorcycle being driven by the deceased was in the name of the 1st claimant/wife and the 3rd respondent issued the policy only for Rs.1,00,000/-, the Tribunal directed the insurance company to pay Rs.1,00,000/-. Even though the liability on the deceased was apportioned @20%, but the Tribunal has determined the total compensation payable at Rs.19.,04.000/-, out of which, 80% of the amount fastened on the RTC is Rs.15,23,200/- and for the remaining 20%, in view of the nature of the policy, only Rs.1,00,000/- was directed to be paid by the insurance company. Aggrieved by the same, the RTC preferred the present appeal.

The learned counsel for the appellant/RTC submits that the Tribunal grossly erred in holding that the accident took place due to rashness and negligence on the part of the driver of the RTC bus, that it is the deceased who himself is responsible for the accident, that the driver of the RTC bus gave evidence to the effect that the motorcycle came in opposite direction in a jig jag manner and dashed the bus and sustained injuries and died on the spot. With regard to quantum of compensation, the learned counsel for the appellant/RTC submits that the Tribunal grossly erred in taking into consideration the income of the deceased by way of his agency in Life Insurance Corporation of India and on the basis of the evidence of PW 3 and Exs.A9, 10 and 11, the Tribunal has erroneously determined the monthly income of the deceased at Rs.18,000/- which is unjust and unreasonable. The learned counsel submits that the amount awarded by the Tribunal is highly excessive and exorbitant.

On behalf of the respondents/claimants 1 & 2, it is submitted that the amount awarded by the Tribunal is just and reasonable which was determined basing on the oral and documentary evidence adduced on either side, which do not warrant any interference and there are no grounds to interfere with the findings of the Tribunal in so far as the liability and the apportionment is concerned.

Heard both sides and perused the material on record.

It is not in dispute that on 23.02.2009 at about 7.30 a.m the deceased was proceeding on his motorcycle from Podili to Ongole side along with PW 2 as pillion rider and when they reached near Gatchu Kaluva bridge, the pillion rider-PW 2 requested the deceased to stop the vehicle for some time so as to facilitate him to ease himself and when the deceased was parking his vehicle on the right side of the road, the offending bus came in opposite direction from Ongole side and dashed against the deceased motorcycle, due to which, the deceased fell down and died on the spot.

The sketch Ex.B1, which is produced by the Corporation, clearly shows that the driver of the RTC bus was driving the bus in a rash and negligent manner and therefore, it cannot be said that the driver of the RTC bus is not responsible for the rash and negligent driving. The evidence of PW 2, the eyewitness, clearly shows that when the deceased was on the right side of the road proceedings towards Ongole, the RTC bus came in opposite direction and hit against the motorcycle, due to which, the deceased fell down and died on the spot. The investigation by the police also reveals that *prima facie* it is the driver of the RTC bus, who is responsible for the accident and hence he was chargesheeted.

The place of accident is such that one cannot expect the motorcyclist who was going towards the main road to drive the vehicle in a rash and negligent manner, on the other hand, the sketch-Ex.B1 clearly shows that the RTC bus being driven by the driver-RW 1 which was proceeding from Ongole towards Markapur was going towards down side under the culvert and at that time virtually the driver of the RTC bus lost control over the vehicle and dashed against the motorcyclist who was no doubt standing on the road towards right side as against the place where he is supposed to be if he is driving the vehicle.

Upon carefully perusing the evidence on record and the sketch-Ex.B1, I have no hesitation in holding that the Tribunal did not commit any error in holding that the driver of the RTC bus is responsible for the accident, but, however, in view of the fact that the deceased motorcyclist went towards right side of the road instead he is to be on left side, apportioned the liability and held that there is contributory negligence on the part of the deceased motorcyclist, the liability is apportioned @20% on the part of the deceased and 80% on the part of the driver of the RTC bus, which do not warrant any interference. Absolutely, there is no material to hold that the Tribunal erred in fastening the liability to pay compensation both on the RTC as well as 3rd respondent-insurance company and there are no grounds to interfere with the same.

With regard to quantum of compensation, the learned counsel for the appellant-Corporation submits that the Tribunal erred in taking into consideration the income of the deceased from the agency of Life Insurance Corporation of India and has arrived at a notional income at Rs.18,000/- per month which is excessive. The learned counsel further submits that the Tribunal ought not to have taken the income of the deceased for 3 preceding years of his death, since there would be fluctuation in every year in the insurance business. On this aspect, the evidence of PW 3 and Exs.A9, A10 and A11 are to be considered.

There is no controversy in so far as the deceased was a person, aged 45 years and that he was a Member and Chairman of the Club of LIC. The deceased was also an income tax assessee and he was having permanent account number. PW 3 deposed that as per Exs.A9, 10 & 11 which are extracts of Agency Earnings of the deceased issued by the LIC of India, the deceased had the following earnings by way of commission for three years preceding to his death:

1. For the year 2006-07 - Rs.2,81,292-38 ps
2. For the year 2007-08 - Rs.3,11,172-67 ps
3. For the year 2008-09 - Rs.2,15,352-00

In the case of a person who died while working in Banking sector or Insurance sector, the income of the deceased for three years immediately preceding to his death has to be taken into consideration and the income during those three years is to be added and then to be divided by '3' for arriving at the notional income of the deceased for one particular year. If that procedure is adopted, the income of the deceased for three preceding years is more than Rs.8,07,500/- and the annual income will be in the range of Rs.2,69,000/-. This has to be divided by '12' in determining the monthly income of the deceased, which come to more than Rs.22,000/-. But the Tribunal has taken the monthly income of the deceased at Rs.18,000/- notionally and proceeded to determine the compensation. The procedure adopted by the Tribunal cannot be said to be in any way erroneous warranting interference.

The Tribunal after taking into consideration the monthly income of the deceased at Rs.18,000/- has applied the multiplier '13' considering the age of the deceased and determined the total loss of dependency after deducting 1/3rd towards personal expenses of the deceased. As already stated, out of the total amount of compensation payable to the claimants, the Tribunal directed the 3rd respondent-insurance company to pay Rs.1,00,000/- for the policy issued by them and directed the appellant/RTC to pay Rs.15,23,200/- together with interest @9% p.a. In so far as the quantum of compensation, I see no reason to interfere with the same. However, the Tribunal erred in awarding rate of interest @9% which shall be @7.5% on the compensation amount. Subject to the above modification, the appeal is liable to be allowed in part.

In view of the foregoing discussion, the appeal is allowed in part. While confirming the award of the Tribunal, the appellant-RTC and 3rd respondent-insurance company are directed to pay the compensation amount as determined & apportioned by the Tribunal together with interest @7.5% p.a thereon from the date of claim petition till realization and with proportionate costs. The appellant/RTC and the 3rd respondent-insurance company shall deposit the compensation amount together with interest and costs within a period of two months from today. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: 27.06.2017
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