

THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

M.A.C.M.A. No. 1765 of 2010

JUDGMENT:

This appeal is arising out of the order dated 21.01.2008 in O.P. No.30 of 2007 on the file of the Motor Accident Claims Tribunal, Hindupur.

2. Brief facts of the case are that on 25.01.2007, at about 5:30 PM, while the deceased B.L. Nagaraju and B.L. Mahalingappa were coming to Padmasree hotel situated in Pavagada road at Madakasira to have tea, an APSRTC bus bearing No.AP-11Z-2456, driven by its driver in a rash and negligent manner, dashed against the deceased B.L. Nagaraju and B.L. Mahalingappa and the head of the deceased crushed under the front wheel of the bus and the deceased died on the spot. The police registered a case in Crime No.8 of 2007 for the offence punishable under Section 304-A IPC. The deceased was doing business in oils, pulses and tamarind and was earning Rs.6,000/- per month and his wife, children and mother lost their dependency and claimed compensation of Rs.5,00,000/- against the respondent-RTC on account of the death of the deceased.

3. RTC filed written statement denying the allegations in the petition and also denying the age, occupation and health condition of the deceased. It is stated that the compensation claimed by the petitioner is excessive. It is also stated that the accident occurred due to the rash and negligent driving by the driver of the bus and that the deceased, while coming from the hotel without observing the bus, dashed the bus in front of a hotel and fell down and died. It is contended that the deceased himself was responsible for the accident, and therefore, the respondent-RTC is not liable to pay compensation.

4. The Tribunal, on consideration of the evidence of PWs.1 and 2, and Exs.A1 to A5, held that the accident occurred due to rash and negligent driving by the driver of the APSRTC bus AP-11Z-2456, and awarded compensation of Rs.2,36,400/-.

5. Aggrieved by the award of the Tribunal, the RTC preferred this appeal on the ground that there is contributory negligence on the part of the deceased.

6. The point for consideration in this appeal is:

(i) Whether there is contributory negligence on the part of the deceased?

7. Learned counsel for the appellant-RTC contended that Ex.A4-Postmortem Report of the deceased, reveals that the viscera of the deceased was smelling alcohol and he was also having two sachets of alcohol in his trouser pockets and, therefore, as the deceased was in a drunken state at the time of accident due to consumption of alcohol, he was also responsible for the accident.

8. Learned counsel for the respondents-claimants submits that the appellant-RTC has not taken this plea in the written statement filed before the Tribunal, and that the appellant is taking this plea for the first time basing on the post-mortem examination report.

9. The finding of the Tribunal is that there was an eyewitness to the accident on whose report an FIR was registered. The eyewitness was examined as PW2. The evidence of PW2 in his chief examination reveals that on 25.01.2007 at about 5:30 PM, when he went to Padmasree hotel situated in Pavagada road at Madakasira to have tea, the deceased was

coming out of the hotel, the APSRTC bus came in a rash and negligent manner and dashed against the deceased.

10. The Tribunal has considered the evidence of PW2 and observed that nothing was elicited in his cross examination to disprove his evidence that the accident occurred due to rash and negligent driving by the driver of RTC bus.

11. Admittedly, PW2 is an eyewitness whose evidence clearly reveals that the accident occurred due to rash and negligence on the part of the driver of the RTC bus. The FIR was lodged against the driver of the RTC bus and after investigation charge sheet was filed in Ex.A3. On consideration of the evidence of PW2 who is the eyewitness, and the documents Exs.A2 and A3, it can be concluded that the accident occurred due to rash and negligent driving by the driver of RTC bus.

12. The contention raised by the learned counsel for the appellant-RTC that the viscera of the deceased is found to have alcohol may not be a significant aspect now to consider without there being any plea taken by the appellant in his written statement before the Tribunal.

13. There is no evidence on record to show that the deceased was in a drunken condition and due to his intoxicated condition, he could not walk properly and while crossing the road, he met with an accident. PW2-eyewitness also did not state anything with regard to the intoxicated condition of the deceased.

14. In view of the foregoing reasons, I do not see any valid reasons to interfere with the findings of the Tribunal in holding the driver responsible

for the accident. Therefore, I do not see valid grounds to interfere with the impugned order.

15. In the result, the appeal is dismissed, and the order dated 21.01.2008 in O.P. No.30 of 2007 is confirmed. No costs. Miscellaneous petitions, if any pending, shall stand closed.

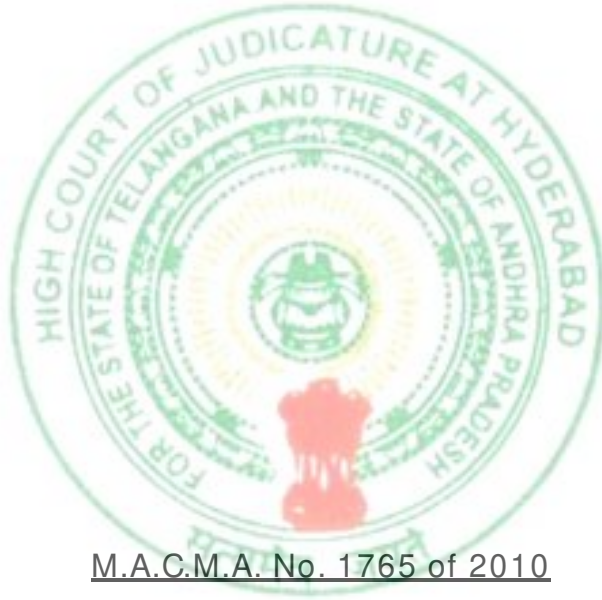
GUDI SEVA SHYAM PRASAD, J

22nd March, 2017

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