

THE HON'BLE SRI JUSTICE N.BALAYOGI

MACMA NO.2175 OF 2009

JUDGMENT:

The appellants/erstwhile Andhra Pradesh State Road Transport Corporation, aggrieved by the Award and decree dated 14.08.2007 passed in O.P.No.596 of 2006 by the learned Chairman, Motor Accident Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad, preferred this appeal contending that the Tribunal erred in finding that the accident occurred was only due to the rash and negligent driving on the part of the driver of the APSRTC bus bearing No.AP 11 Z 4499 and the Tribunal ought to have held that the accident occurred due to negligence on the part of the driver of the bus bearing No.AP 11 T 8888. It is further contended that the Tribunal went wrong in assessing the income of the deceased at Rs.5,000/- per month, though the deceased was a student and that it failed to see that the contribution of the deceased to the family after his marriage would be reduced in due course.

2. The parties hereinafter are referred to as arrayed before the Tribunal.

3. On the other hand, the claimants contended that the driver of RTC bus drove in rash and negligent manner, at high speed, came in opposite direction and while overtaking another vehicle, came on wrong side, lost the control and collided with the college bus. There is no rebuttal evidence to establish negligence on the part of the driver of the college bus. Hence, the finding of the Tribunal that the accident was occurred due to rash and negligent driving of the driver of RTC bus is legal, valid and do not suffer from any legal infirmities warranting interference.

4. Now the point that arises for determination is:

Whether the Award dated 14.08.2007 in O.P.No.596 of 2006 suffers from any legal infirmities warranting interference in the appeal and is liable to be set aside?

5. The claimants filed O.P.No.596 of 2006 under Section 166 of the Motor Vehicle Act, 1988 claiming compensation of Rs.10 lakhs with subsequent interest and costs. The claimants alleged that the accident was caused by the driver of the appellants, who drove RTC bus in a rash and negligent manner.

6. The Tribunal, having considered the pleadings of the claimants and respondents settled the following issues for trial:

- 1) Whether the accident occurred on 29.10.2005 at about 4.00 P.M. due to rash and negligent driving of RTC bus bearing No.AP 11Z 4499 by its driver causing death of the deceased?
- 2) Whether the petitioners are entitled to the compensation and if so, to what amount and from which of the respondents?
- 3) to what relief?

7. In support of the case of the claimants, PWs.1 and 2 were examined and Exs.A1 to A.14 were marked. On behalf of the respondents, no oral or documentary evidence was let in.

8. On issue No.1, the Tribunal having considered the evidence of PW.2, who is an eye witness, correspondent of the college, came to the conclusion that at the time of accident on 29.10.2005 at 04.00 PM, supported by Ex.A.1-certified copy of FIR presented by PW.2, Ex.A.3 copy of the scene of offence, Ex.A.6-certified copy of charge sheet and Ex.A.5-certified copy of MVI report, several students and lecturers were travelling in the bus bearing No.AP11 T 8888 from Ponnala Village towards Hyderabad, in the meanwhile, RTC bus bearing No. AP 11Z 4499

driven by its driver came in a rash and negligent manner with high speed and while trying to overtake another vehicle, hit the college bus.

9. PW.2 is the Correspondent of Indur Institute of Engineering and Technology at Ponnala Village, Siddipet Mandal, Medak District. In Ex.A6, PW.2 was cited as first prosecution witness. The evidence of PW.2 supported with Ex.A.1 and confirmed by the Investigating Officer under Ex.A.6 further establish that on that day PW.2 was following the college bus in his own car and witnessed that RTC bus bearing No.AP11Z 4499 came on wrong direction. The Investigating Officer in Ex.A.3-scene of offence and also in Ex.A.6-charge sheet specifically found that RTC bus came on wrong side. In Ex.A.3-scene of offence there is a clear mention that the college bus was on extreme left side i.e. on southern side of the road and its left two tyres were occupying part of the road margin on the left side. Whereas, the offending RTC bus had crossed middle line from the road towards eastern side leaving a margin of 10 to 16 yards of northern road margin, which clearly indicates that the offending RTC bus had protruded into the margin of the college bus and dashed it, which is a clear rash and negligence on the part of the driver of the RTC bus. More so, the MVI under Ex.A.5-report opined that the accident was not occurred due to any mechanical defect of RTC bus.

10. Admittedly, there is no rebuttal evidence produced by the appellants/respondents. In the absence of any such rebuttal evidence, the Tribunal is perfectly legal in finding that the accident was occurred due to rash and negligent driving of the driver of RTC bus bearing No.AP 11 Z 4499 and there is no negligence on the part of the college bus driver bearing No. AP 11 T 8888. Hence, the contention of the appellants that the accident was occurred due to collision between two vehicles has no legs to stand.

11. Further the contention of the appellants is that the Tribunal wrongly assessed the income of the deceased as Rs.5,000/-, though he was a student. PW.1, who is none other than the father of the deceased - Sarvesh Srivastav, who deposed that his son was aged 20 years at the time of accident and he was studying B.Tech. In the cross examination, PW.1 stated that he was 49 years old and in the claim petition, the age of Smt Neeta Srivatsav, who is the mother of the deceased was noted as 45 years. PW.2 in his chief examination stated that Sarvesh Srivatsav is second year B.Tech student, succumbed to injuries in Yashoda Hospital. In Ex.A.2-Inquest Report, in Ex.A.4-Postmortem report and in Ex.A.6-charge sheet, the age of the deceased was noted as 20 years. In Ex.A.8-date of birth certificate and in Ex.A.9-transfer certificate, the date of birth of the deceased was noted as 02.01.1986. Accordingly, the Tribunal considering the evidence of PW.1 supported by Exs.A.8 and A.9 came to the conclusion that the date of birth of the deceased was 02.01.1986 and he was aged 20 years by the date of accident. Further, as per Exs.A.7 to A.11, the Tribunal came to the right conclusion that the deceased was B.Tech second year student by the date of accident and he was unmarried.

12. Since the deceased was unmarried and was a student by the date of accidental death, the Tribunal rightly took the age of the mother of the deceased as 45 years and also assessed the income of the deceased taking into consideration that the deceased was B.Tech second year student and his future income assessed as Rs.5,000/- per month. There is no rebuttal evidence to the evidence of PW.1 and documentary evidence under Exs.A.7 to A.13. In the absence of any such rebuttal evidence, I find that the findings of the Tribunal and awarding Rs.4,25,000/- as compensation to the petitioners, apportionment and

permission to withdraw the amount is perfectly legal, valid and did not warrant interference.

13. Accordingly, the appeal is dismissed while confirming the Award and Decree dated 14.08.2007 in O.P.No.596 of 2006 passed by the learned Chairman, Motor Accident Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad. There shall be no order as to costs.

14. It is further ordered that the compensation amount shall be paid to the claimants in the apportionment indicated by the Tribunal.

15. The appellants/respondents 1 and 2 are directed to pay the balance amount of compensation, if any, and interest within a period of two months from the date of receipt of a copy of this judgment.

16. Advocate Fee is fixed at Rs.2,500/-

Miscellaneous petitions if any pending in this appeal shall stand dismissed.

Date: 02.08.2017
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N.BALAYOGI, J