

THE HON'BLE MR JUSTICE N.BALAYOGI

M.A.C.M.A. No.2437 of 2009

JUDGMENT:

The appellants-respondents aggrieved by the Order and Decree dated 15.05.2008 in O.P.No.644 of 2005, preferred this appeal contending that there was negligence on the part of drivers of lorries bearing Nos.AP 28 T 5269 and AP 16 TU 9394 and the Tribunal ought to have at least fixed contributory negligence on the part of drivers of the said lorries as it is a head on collision. It is further contended that the Tribunal also failed to consider that the O.P. is bad for non-joinder of drivers of the said lorries. The multiplier applied is bad in law. Further, the Tribunal erred in assessing the income at Rs.3,500/- per month, though the deceased was a student and non-earning person, particularly in the absence of income proof. The Tribunal completely relied on deposition of P.W.2 instead of R.W.1. Accordingly, the impugned Order is illegal, void and liable to be set aside.

2. On the other hand, the respondents-claimants contended that the driver of R.T.C. bus bearing No.AP 11 Z 2738 drove the bus in a rash and negligent manner and first dashed the lorry bearing No.AP 28 T 5269, which came in opposite direction and later hit another lorry bearing No.AP 16 TU 9394 and there is no contributory negligence on

the part of drivers of lorries, hence the O.P., without adding them, can be maintained.

3. The Tribunal, having considered the pleadings of both parties, settled the following issues for trial :

- “1. *Whether the accident had occurred due to rash and negligent driving of the RTC bus bearing No. AP 11 Z 2738 by its driver?*
2. *Whether the deceased Eluka Sujatha died in the accident due to sustaining of injuries and whether the petitioners are entitled to claim compensation? If so, to what amount and from which of the respondents?*
3. *To what relief?”*

4. In support of the claim, the respondents-claimants examined P.Ws.1 to 3 and marked Exs.A1 to A17. On behalf of appellants-respondents, R.W.1 was examined and no documents were marked.

5. The second claimant is examined as P.W.1 and the eyewitness to the accident is examined as P.W.2. The evidence of P.Ws.1 and 3 is that the deceased is the only daughter of the claimants. It is not in dispute that the deceased was unmarried and was studying at the time of the accident and no legal heir certificate is filed. To rebut the evidence of P.Ws. 1 and 3, appellants-respondents did not adduce any oral or documentary evidence. More so, under Ex.A1 – F.I.R., Ex.A2 – charge sheet, Ex.A3 – Inquest Report, Ex.A4 – PME Report, Ex.A6 – Income Certificate, Ex.A7 – Transfer Certificate, Ex.A8 – Community and date of birth certificate, Ex.A9 – S.S.C. marks memo, Ex.A10 – Study Certificate, Ex.A11 – Memorandum of marks of SBTET, Ex.A13 – Transfer Certificate, Ex.A14 – Community and

Date of Birth Certificate, Ex.A15 – S.S.C. Marks Memo., Ex.A16 – Study Certificate and Ex.A17 – Memorandum of marks, the deceased Sujatha is shown as daughter of Eluka Bhoomaiah, the first claimant. In the absence of any rebuttal evidence, the evidence of P.Ws.1 and 3, corroborated and supported by documents – Exs.A1 to A4, A6 to A11 and A13 to A17, wherein the first claimant is shown as father of the deceased, established that the claimants are parents of the deceased.

6. Further, the evidence of P.Ws.1 and 3 is that the deceased was brilliant in studies and also by doing agricultural works, she used to earn Rs.10,000/- per month and contribute the same to the family and due to sudden death, respondents-claimants, who have no other source of income, naturally dependents on the deceased, who was earning besides prosecuting her studies. The above facts clearly establish that the respondents-claimants are naturally dependents on the deceased.

7. With regard to the rash and negligence of the driver of the R.T.C. bus bearing No.AP 11 Z 2738, there is consistent and corroborative evidence of P.Ws.1 and 2, wherein they deposed that on 23.4.2005 at 8 AM while P.W.2 was standing by the side of the road in the outskirts of Ramayapally, he observed that the bus bearing No. AP 11 Z 2738 was proceeding from Hyderabad towards Kamareddy side on N.H.7 road, whereas P.W.1's evidence is that she was traveling in the same bus along with her daughter (deceased). The second witness Sri Usirikapally Salaiah during cross examination stated that the Police examined and recorded his statement. In the

Ex.A2 – charge sheet, he was cited as 9th witness. The only suggestion to P.W.2 is that he was not present at the time of accident and he was deposing falsely. There is no whisper about the presence of P.W.2 at the accident spot in the evidence of R.W.1, who was one of the driver of the offending R.T.C. bus at the time of the accident.

8. In view of consisting corroborative evidence of P.Ws.1 and 2 and as they were cited as witnesses under Ex.A2 - charge sheet and more particularly, in the absence of any rebuttal evidence, I find that P.Ws.1 and 2 are present at the accident spot and the fact that they are eyewitnesses to the accident cannot be doubted.

9. The consistent and corroborative evidence of P.Ws.1 and 2 is that when the driver of R.T.C. bus bearing No. AP 11 Z 2738 reached outskirts of Ramayapally village on the Hyderabad – Nagapur road on N.H.7, he drove the bus in a rash and negligent manner with high speed, dashed against the lorry bearing No.AP 28 T 5269 coming in opposite direction and later hit another lorry bearing No.AP 16 TU 9394. The suggestion to P.Ws.1 and 2 is that at the time of accident an auto rikshaw and lorry were parked on the left side of the road and to avoid them, the driver of the bus drove the bus towards right side, in the meanwhile, a lorry came in opposite direction with high speed and dashed against R.T.C. bus, so the driver of the lorry was at fault in the accident. For this, there is no convincing rebuttal evidence, except oral evidence of R.W.1, who is one of the drivers of the bus, who has spoken what was suggested to P.Ws.1 and 2. More so, there

is documentary evidence to support the corroborative evidence of P.Ws.1 and 2.

10. Ex.A1 is the copy of the F.I.R., wherein there is a clear assertion that the driver of the bus in which the deceased Sujatha was traveling along with her mother P.W.1, drove the bus in a rash and negligent manner with high speed and dashed against lorry bearing No. AP 28 T 5269 which was coming from the opposite direction and later dashed to another lorry bearing No.AP 16 TU 9394.

11. The Investigating Officer, after thorough investigation, filed the charge sheet under Ex.A2 finding that the accident was due to rash and negligent driving of the driver of the R.T.C. bus bearing No. AP 11 Z 2738. The inquestdars under Ex.A3 opined that the accident occurred only due to rash and negligence driving of the driver of the R.T.C. bus bearing No.AP 11 Z 2738 and Sujatha succumbed to injuries while undergoing treatment. The Doctors, who conducted PME on the dead body of Sujatha under Ex.A4 - Post Mortem Examination report, opined that the death was due to head injury. Accordingly, there is nexus between the death and the accident involving the R.T.C. bus bearing No. AP 11 Z 2738.

12. Motor Vehicles Inspector under Ex.A5 opined that the accident has not occurred due to any mechanical defect of the vehicle.

13. The Tribunal, having marshaled the facts and after elaborate discussion of the oral evidence of P.Ws.1 and 2 and documentary

evidence under Exs.A1 to A5, came to the right conclusion that the accident was occurred due to rash and negligent driving of the driver of the R.T.C. bus bearing No. AP 11 Z 2738. There is absolutely no iota of evidence to establish any negligence on the part of drivers of lorries bearing Nos. AP 28 T 5269 and AP 16 TU 9394. Hence, the petition, without adding the owner and insurer of the said lorries, can also be maintained.

14. With regard to the income, age and occupation of the deceased, there is evidence of P.Ws.1 and 3, wherein they deposed that the deceased was 20 years old by the date of death. P.Ws.1 and 3 further deposed that the deceased was hale and healthy and having good physique, good sportswoman and she was a student and brilliant in studies and also she was doing agricultural works and earning Rs.10,000/- per month. Had she been alive, she would have become A-Class officer and would have earned Rs.50,000/- per month in her life time and due to her sudden death, claimants lost their daughter's love and affection and also the future dependency. For that, there is no rebuttal evidence. R.W.3 did not speak anything about the deceased's occupation, income or any other agricultural works.

15. The evidence of P.Ws.1 and 3 is that the deceased was aged about 20 years. In Ex.A3, the age of the deceased is noted as 22 years and her occupation is shown as student of B.Sc. (Nursing). Ex.A9 is the xerox copy of the S.S.C. certificate. Ex.A10 is study certificate for the year 1999-2002. Ex.A16 is study certificate. Ex.A17 is three

years marks memos and pass certificate and also memorandum of marks issued by Board of Intermediate. In the documents, Ex.A7 – Transfer Certificate, dated 24.4.2002, Ex.A8 - Community, nativity and date of birth certificate, dated 16.6.2000, Ex.A9 - SSC certificate, Ex.A14 -Community, nativity and date of birth certificate dated 16.6.2000, Ex.A15 - S.S.C. marks memo, the date of birth of the deceased was noted as 2.7.1984, whereas the accident was occurred on 23.4.2005 and Sujatha succumbed to injuries at 9.30 hours on the way to shifting to Gandhi Hospital, Secunderabad. Thus, she was 20 years old at the time of death.

16. Since the deceased was doing B.Sc. (Nursing) and she was a student, the Tribunal relied on the decision in *United India Insurance Company Vs. C.Mallikarjun and Others*¹ wherein this Court held that where the deceased was unmarried, the age of the younger of the parents has to be taken into account in choosing appropriate multiplier. Considering the age of P.W.1, who is the mother of the deceased, aged about 42 years, the Tribunal applied multiplier '15'. With regard to the income, the Tribunal came to the right conclusion relying on the documentary evidence that the deceased was a brilliant student and but for the accident, she would have started earning by doing nursing job.

¹ 2007 ACJ 1453

17. The learned counsel for the respondents-claimants relied upon a decision in *Ramehar & Others Vs. Vinod Kumar and Others*² wherein the Delhi High Court held that the monetary income of the deceased should be taken at minimum Rs.3,500/-. In the said case the deceased was aged about 18 years and he was brilliant in studies, but he studied matriculation, whereas in the present case, the deceased did intermediate and also doing B.Sc. (nursing) and she being professionally qualified, the income was taken at Rs.3,500/- per month and annual income at Rs.42,000/-. The Tribunal also deducted 1/3rd towards her personal expenses, because she was unmarried and awarded compensation of Rs.4,22,000/- with interest thereon at 7.5% per annum from the date of filing of the petition till the date of payment or deposit, which is quite reasonable and hence sustained.

18. In the facts and circumstances stated above, I find that the Tribunal has well appreciated the oral and documentary evidence and marshaled the facts and after elaborate discussions, came to the right conclusion that the accident was due to the rash and negligent driving of the driver of the R.T.C. bus bearing No.AP 11 Z 2738 and there is no contributory negligence on the part of drivers of lorries bearing Nos.AP 28 T 5269 and AP 16 TU 9394. Since the deceased was a student, the age of the mother was taken into account and applied the appropriate multiplier and awarded the compensation. Therefore, the

² (1) 2008 ACC 865

award is legal, valid and do not suffer from any legal infirmities warranting interference of this Court.

19. Accordingly, M.A. C.M.A. is dismissed with costs, while confirming the Order and Decree dated 15.05.2008 in O.P.No.644 of 2005 passed by the learned Chairman, Motor Accident Claims Tribunal (VIII Additional District Judge) at Nizamabad.

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

21. The appellants/respondents 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. On such deposit, the claimants are permitted to withdraw the same.

22. The Advocate fee is fixed at Rs.2,000/-.

23. Miscellaneous Petitions, if any, pending in this appeal shall stand dismissed.

JUSTICE N.BALAYOGI

Date : .08.2017.
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