

HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A. No. 574 of 2009

JUDGMENT:

1. The appellant/APSRTC aggrieved by the Award and Decree dated 07.11.2006 passed in MVOP.No.801 of 2004 by the learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-I Additional District Judge, Visakhapatnam, preferred this appeal mainly on the grounds that at the time of accident, the bus was taken from inspection pit to wash plant and the speed of the bus under any circumstances cannot be more than 3 to 4 kilometers per hour and it was driven slowly.

2. It is contended that the evidence of R.W.1 that at the time of accident, the deceased might have come from the bushes negligently and dashed the bus. It is contended that P.W.2 is not a direct witness to the accident. The road from the Bus depot to washing plant is a 'katcha' road and therefore there is no possibility of driving the bus at high speed.

3. It is further contended that the Tribunal failed to see that the net salary of the deceased was Rs.3,396.40 Ps and erred in assessing the compensation by applying the multiplier '13'.

4. On the other hand, the respondent-claimant contended that the accident was due to rash and negligence on the part of the mechanic in driving the offending RTC bus at the

time of accident and that the findings of the Tribunal are legal, valid, and do not suffer from any legal infirmities.

5. The case of the respondent/claimant in brief is that on 05.01.1999 at about 12.15 Noon while the deceased was in the bus depot, the mechanic belonging to APSRTC drove the bus bearing registration No.AP 10Z 5025 in rash and negligent manner and dashed the deceased, as a result of which, the deceased fell down on the road. He succumbed to injuries while undergoing treatment.

6. Before the Tribunal, the appellant/APSRTC filed counter affidavit denying the manner of accident. It was stated that there was no possibility of driving the bus more than a speed of 3-4 kilometers per hour and that the mechanic drove the bus slowly. There is no negligence on the part of the bus driver. It was further stated that the monthly net income of the deceased was Rs.3,328.40 Ps and the compensation amount awarded by the Tribunal is excessive.

7. During the cross examination, P.W.1 admitted that he was not a direct witness to the accident. Since P.W.1 is not an eye witness to the accident, the Tribunal relied on evidence of P.W.2, who deposed that at the time of accident, one mechanic-Raju was driving the bus at high speed, due to which, the door of the bus hit the deceased. Immediately P.W.2 rushed to the spot and, himself and others, shifted the deceased to CDR Hospital.

8. Ex. A.1 is the copy of FIR, which was lodged by the Depot Manager, who did not witness the accident. Hence, the Tribunal having considered the facts and evidence on record, found that the contents of Ex.A.1-FIR are not conclusive to arrive at the manner of accident.

9. The driver of the offending RTC bus was examined as R.W.2 who deposed that after repairs, the bus was sent for washing. While taking the bus for washing, the bus has to proceed and take 'U' turn and after the bus took 'U' turn to reach the washing plant, it went some distance, where accident occurred. Therefore it is clear from the evidence of R.W.1 that there is involvement of RTC bus in the accident. R.W.1 is not a direct witness to the accident. After hearing cries of somebody, he stopped the bus and walked to back side of the bus and noticed a person lying on the road. From the evidence of R.W.1, it is clear that the road on which bus was proceeding was a 'katcha' road. The evidence of P.W.1 and R.W.1 thus goes to show that the offending RTC bus hit the deceased due to negligent driving by the mechanic while proceeding to washing plant.

10. From the documentary evidence at Ex. A.1-FIR and Ex. A.2-Post-mortem certificate, it indicates that the offending RTC bus ran over the deceased. Hence the denial of R.W.1 that the RTC bus ran over the deceased has no legs to stand.

11. In those circumstances, and in the absence of any convincing rebuttal evidence, the Tribunal is perfectly right in holding that the accident occurred due to rash and negligent driving of the RTC bus bearing No. AP 10Z 5025.

12. With regard to the income of the deceased, the evidence of P.W.1 supported by Ex. A.6-salary certificate goes to suggest that the gross income of the deceased was Rs.6,780/- per month whereas net income was Rs.3,384.20 Ps per month. Admittedly the deceased was not an income-tax assessee. Hence the Tribunal was right in taking the gross salary as monthly income of the deceased. Further, taking into consideration Exs.A.2 and A.3 wherein the age of the deceased was noted as 45 years, the Tribunal rightly applied the applicable multiplier '13' after deducting 1/3rd towards his personal living expenses had he been alive and assessed the loss of dependency at Rs.7,05,120/-. Besides the same, the Tribunal awarded Rs.15,000/- towards loss of consortium, and Rs.10,000/- towards loss of estate. I do not see any error or irregularity in considering Ex. A.6 for assessing the compensation.

13. Thus, in all, the Tribunal awarded compensation of Rs.7,30,120/- with interest at 7.5% per annum from the date of petition till the date of deposit holding that the appellant-APSRTC and sixth respondent are jointly and severally liable to pay the said compensation.

14. In view of the foregoing discussion, I find that the findings of the Tribunal are legal, valid and do not suffer from any legal infirmities warranting interfere by this Court.

15. In the result, the appeal is dismissed while confirming the Award and Decree dated 07.11.2006 passed in MVOP.No. 801 of 2004 by the learned Chairman, Motor Vehicle Accident Claims Tribunal-cum-I Additional District Judge, Visakhapatnam.

16. Advocate fee is fixed at Rs.2000/-

17. Miscellaneous petitions pending consideration if any in the appeal shall stand closed in consequence. No order as to costs.



JUSTICE N. BALAYOGI

DATED 10th October, 2017.
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