

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No.466 of 2010

JUDGMENT :

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act"), is preferred by the appellant – A.P. State Road Transport Corporation (APSRTC), challenging the order and decree dated 29.09.2009 in O.P.No.5 of 2006 passed by the II Additional District and Sessions Judge (FTC), Medak at Sangareddy (for brevity "the Tribunal"), partly allowing the petition filed by the respondent-claimant awarding compensation of Rs.90,000/- as against the claim of Rs.2,00,000/- with interest @ 7.5% per annum from the date of petition till realization, for the disability sustained by him because of the accident.

2. The brief facts of the case are that, on the complaint given by the respondent-claimant, the Station House Officer, Kushaiguda Police Station, Hyderabad, has registered a case in Crime No.305/2004 for the offence punishable under Sections 337 and 338 IPC against the driver of appellant-APSRTC Bus bearing No.AP 11-Z-1957 belonging to Chilakaluripeta Depot, as the driver of the bus drove it in a rash and negligent manner and dashed against the respondent-claimant, who was sleeping in an open place at e-Seva Centre of A.S. Rao Nagar, Secunderabad, by parking

his bus bearing No.AP-15-U-1503 in the morning hours of 03.11.2004 at about 4.39 a.m. Subsequently, the respondent-claimant filed the above O.P. under Section 166 of the Act claiming compensation of Rs.2,00,000/- for the disability sustained by him in the said accident. On consideration of the evidence of witnesses P.W.1 – claimant and P.W.2 – Medical Officer, who treated the claimant, and the documentary evidence under Exs.A.1 to A.10, the Tribunal held that the accident occurred only due to the rash and negligent driving on the part of the driver of the R.T.C. Bus bearing No.AP-11-Z-1957 and accordingly, vide order and decree dated 29.09.2009, partly allowed the petition awarding compensation of Rs.90,000/- with interest @ 7.5% per annum as against the claim of Rs.2,00,000/- made by the respondent-claimant towards the disability sustained by him in the accident.

3. Aggrieved by the impugned order and decree dated 29.09.2009, the appellant – APSRTC has preferred this appeal on the short point that there was contributory negligence on the part of the respondent-claimant, who was sleeping on the road at the time of accident where the buses would ply.

4. Heard the arguments of learned Standing Counsel for the appellant-APSRTC as well as the learned counsel for respondent-claimant and perused the impugned judgment and also the evidence on record.

5. Learned Standing Counsel for the appellant-APSRTC submits that the accident occurred due to the sheer negligence on the part of the respondent-claimant, who was sleeping at a place where the buses would ply and, therefore, there is contributory negligence on the part of the respondent-claimant also.

6. On the other hand, learned counsel for the respondent-claimant submits that after considering the evidence on record, the Tribunal had categorically held that the driver of the RTC Bus was rash and negligent in driving the bus and that is the reason why the accident had occurred. He would further submit that the Tribunal has placed reliance on the evidence of P.Ws.1 and 2 and documentary evidence under Exs.A.1 to A.10 and came to the conclusion that the accident occurred on account of the rash and negligent driving by the driver of the RTC Bus. The learned counsel further contended that the appellant-APSRTC has not examined the driver of the bus, who had driven the bus in a rash and negligent manner, or any other nearby person, who witnessed the incident, to prove that the accident had occurred due to the negligence of the respondent-claimant, who was sleeping in an open place at e-Seva Centre, A.S. Rao Nagar, Secunderabad, by parking his bus bearing No.AP-15U-1503, where the buses would ply.

7. On consideration of the arguments of learned counsel for the respective parties, it is obvious that the driver of the offending bus has not been examined in this case to prove the alleged accident. It is to be noticed that the driver of the offending bus is the best witness in this case. Though the accident occurred at a place where there is likelihood of movement of the people, none of the persons present there were examined to prove the accident. No doubt, it is stated that the accident occurred in the wee hours at 4.30 a.m., on 03.11.2004, however, in the absence of any evidence produced by the appellant-APSRTC that the accident occurred due to the negligence on the part of the respondent-claimant and as the Tribunal has appreciated the evidence on record, particularly the evidence of P.W.1 and documentary evidence under Exs.A.1-FIR and A.2-charge sheet and came to the conclusion that the accident occurred due to the rash and negligent driving by the driver of the offending bus, I am not inclined to interfere with the findings recorded by the Tribunal. Moreover, this O.P. is pertaining to the year 2006 and the Award was passed in the year 2009. After a lapse of 8 years, now the appeal is being heard. Therefore, at this length of time, it is not proper to upset the findings of the Tribunal, which has appreciated the evidence on record in proper perspective and arrived at a just conclusion that the accident occurred due to the rash and negligence on the part of the driver of the RTC Bus. Therefore, there are no valid

grounds to interfere with the well considered Award passed by the Tribunal and the appeal is liable to be dismissed.

8. In the result, the appeal is dismissed thereby confirming the order and decree dated 29.09.2009 in O.P.No.5 of 2006 passed by the Tribunal. Interim stay granted by this Court on 29.03.2010 shall stand vacated. No order as to costs.

9. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

20.11.2017.
Msr

GUDISEVA SHYAM PRASAD, J



HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No.466 of 2010



20.11.2017
Msr