

THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

M.A.C.M.A.No.933 of 2010

JUDGMENT:

This appeal is arising out of the Award dated 13.07.2009 passed in O.P.No.715 of 2008 on the file of the V Additional Metropolitan Sessions Judge-cum-Mahila Court, Hyderabad.

2. The appellants are the respondents and the respondents are the petitioners-claimants, who filed the said O.P. under Section 163-A of Motor Vehicles Act claiming compensation of Rs.4,00,000/- on account of the death of Sri K.Gaibappa (hereinafter referred to as 'the deceased') in the road accident.

3. The brief facts of the case are that on 11.02.2008 at about 8:30 P.M., while the deceased was coming in A.P.S.R.T.C. bus bearing No.AP 10Z 4655 from Thandur to Karankote Village and when he reached near Karankote bus stop, the driver of the bus drove the bus in a rash and negligent manner and applied sudden breaks, due to which, the deceased fell down from the bus and received grievous injuries all over the body. He was treated in Tandur Government Hospital and from there, he was shifted to Osmania General Hospital. While undergoing treatment, the deceased died on 12.02.2008. The police registered a case in crime No.27 of 2008 under Section 304-A IPC. The deceased was a labourer in a stone quarry and earning more than Rs.3,000/- per month. On account of his sudden death, the wife, daughter and mother lost their dependency and earnings of the deceased.

4. The respondents filed their counter denying the allegations made in the petition. It is stated that the bus was fully packed with passengers

and some passengers travelled on the top of the bus in spite of warning given by the driver and conductor not to travel on the bus. The bus reached Karankote Village at 8:30 P.M. and stopped by the side of the road. At that time, one person, who was travelling on the top of the bus got confused and fell down without there being any accident. The bus is not involved in accident on 11.02.2008 and there was no rash and negligent act on the part of the driver of the bus. The accident took place due to the negligence on the part of the deceased. The claimants are being put to strict proof of age, income and occupation of the deceased and that they are the legal heirs of the deceased. The compensation claimed by the petitioners is excessive. Therefore, the petition is liable to be dismissed.

5. The Tribunal, on consideration of the evidence of P.Ws.1 and 2 and Exs.A1 to A4 documents on behalf of the petitioners and R.W.1 on behalf of the respondents has answered issue No.1 holding that the accident occurred due to the rash and negligent driving of the bus driver and answered issue No.2 awarding compensation of Rs.4,00,000/- to the claimants on account of the death of the deceased. Aggrieved by the Award passed by the Tribunal, the A.P.S.R.T.C. preferred this appeal.

6. Heard arguments of learned counsel for the appellants. Though notices were served to the respondents, none appeared on their behalf and hence, the arguments, on their behalf, are deemed to be heard.

7. Learned counsel for the appellants mainly contended that the accident occurred due to self negligence on the part of the deceased. There is no negligence on the part of the driver or conductor of the bus. The deceased sat on the top of the bus in spite of warning given by the

driver and conductor of the bus. When the bus was stopped, the deceased got confused and fell down from the bus and therefore, there is no negligence on the part of the driver of the bus and the entire negligence is on the part of the deceased alone. Therefore, the claimants are not entitled for compensation. It is further contended that the compensation claimed by the respondents is highly excessive.

8. On behalf of the petitioners, P.Ws.1 and 2 were examined. P.W.1 is the wife of the deceased and P.W.2 is an eye witness to the accident. P.W.2 stated in his affidavit that on 11.02.2008 at about 8:30 P.M. while the deceased and others were coming in A.P.S.R.T.C. bus bearing No.AP 10Z 4655 from Thandur to Karankote Village and when they reached near Karankote bus stop, the driver of the bus drove the bus in a rash and negligent manner and applied sudden break, due to which, the deceased fell down from the bus and received grievous injuries. He denied the suggestion that the accident occurred not due to the rash and negligent driving of the driver of the bus. It is the contention of the appellants that the deceased sat on the top of the bus and he fell down from the bus. As such, the accident has occurred due to the negligence on the part of the deceased and there was no fault on the driver. The Tribunal, on consideration of the evidence of PW2 has observed that it is the duty of conductor to see that the passengers should be inside the bus and he should not allow the passengers to travel on the top of the bus. Though the bus was fully packed, the driver and conductor allowed the passengers to sit on the top of the bus. Allowing of the driver and conductor of the bus to travel the passengers on the top of the bus itself is their negligent attitude. The Tribunal also observed that P.W.2 stated in his affidavit that the driver applied sudden break and consequently, the

deceased fell down from the bus. It is also observed that in FIR also, it was stated that the bus driver applied sudden breaks and hence the deceased fell down from the bus.

9. The driver of the bus was examined as R.W.1 and his testimony reveals that he stopped the bus at Karankote bus stand at about 8:30 P.M. The passengers were getting down from the bus and suddenly he heard one sound that one person, who is not the passenger, in a drunken condition fell down and sustained head injury. The Tribunal did not accept the evidence of R.W.1, the driver of the bus as there is inconsistency in his evidence with the contents of the counter filed by him. The Tribunal held that the driver had knowledge about the passengers, who sat on the top of the bus, but he applied sudden break negligently, due to which, the deceased fell down and received injuries. Therefore, the driver of the bus was negligent in driving the bus.

10. It is obvious from the record that the driver and conductor of the bus allowed the deceased to sit on the top of the bus. As a matter of fact, the driver and conductor of the bus should not have allowed the passengers to sit on the top of the bus. If the passengers are on the top of the bus, at least the driver should have driven the bus carefully. It is clear from the record that the driver had applied sudden breaks and therefore, the persons who were sitting on the top of the bus fell down and received injuries. No doubt, the passengers must have knowledge that it was not the place where they can sit and travel, yet the deceased had taken a risk and travelled. Therefore, there is some negligence on the part of the deceased also.

11. On consideration of the facts and circumstances of the case, I am not inclined to interfere with the award passed by the Tribunal, but the negligence is apportioned at the rate of 75% on the driver and conductor and 25% on the deceased, who sat on the top of the bus and travelled. No doubt the petition was filed under Section 163-A of the Motor Vehicles Act, 1988, yet in view of the peculiar facts of the case, there is contributory negligence on the part of both the driver and conductor and also the deceased. As the driver and conductor being the Government officials, working under the control of APSRTC, permitted the passengers to sit on the top of the bus, the responsibility is more on them and therefore, their negligence is fixed at 75%. The deceased being an illiterate intended to travel by sitting on the top of the bus, therefore, his negligence is fixed at 25%.

12. In the result, the appeal is disposed of confirming the quantum of compensation awarded by the Tribunal but fixing the negligence on A.P.S.R.T.C. at 75% and on the deceased at 25%. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending shall stand closed.

GUDI SEVA SHYAM PRASAD,J

Date : 23.03.2017
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