

THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

M.A.C.M.A No. 1096 of 2010

JUDGMENT:

This appeal is arising out of the Order and Decree dated 12.10.2009 passed in O.P.No.32 of 2007 by the Chairman (MACT)-cum-II Additional District & Sessions Judge, Nizamabad.

2. Brief facts of the case are that on 04.11.2006, at about 5:00 PM, while the deceased was traveling on TVS Champ as a pillion rider, on the left side of their road, an RTC bus bearing No.AP-11Z-4935 coming from Hyderabad, at a high speed, driven by its driver in a rash and negligent manner, dashed the TVS Champ of the deceased, due to which the deceased fell down and received head injury and also injuries all over the body. He was taken to Government Hospital, Nizamabad, and from there to Gandhi Hospital, Secunderabad. On 19.11.2006, the deceased succumbed to injuries while undergoing treatment. Alleging that the accident occurred due to rash and negligent driving by the driver of the RTC bus, the claimants filed claim petition claiming compensation of Rs.5,00,000/- against the Corporation.

3. The Tribunal allowed the claim petition by awarding compensation of Rs.5,00,000/-.

4. The Corporation, aggrieved by the fixing of liability against the driver of RTC bus, and also the award of compensation of Rs.5,00,000/- has preferred this appeal.

5. The point for consideration in this matter is whether there is contributory negligence on the part of RTC bus and TVS Champ.

6. Heard the arguments of learned counsel for the appellant and respondent.

7. This is a case of collision between APSRTC bus and TVS Champ. The deceased was a pillion rider on TVS Champ which met with accident when APSRTC bus dashed against TVS Champ. The deceased being pillion rider of TVS Champ received injuries and died. The Tribunal held that the driver of APSRTC negligent and granted compensation of Rs.6,20,000/- and restricted it to Rs.5,00,000/- which is the claim of the appellants.

8. It is argued on behalf of the appellant that there is contributory negligence on the part of the driver of the APSRTC bus and also the rider of TVS Champ, but the Tribunal fixed the liability on the driver of APSRTC bus.

9. Three witnesses were examined on behalf of the claimants who are PWs.1 to 3, and Exs.A1 to A16 were marked. On behalf of the respondents RW1 was examined.

10. There is evidence of PW1 and RW1 and the documents Ex.A1-FIR, and Ex.A2-Chargesheet before the Tribunal, for assessing the rash and negligent act on the part of the driver who was responsible for the accident. PW1 is an eye witness to the accident. He is an independent witness. RW1 is the driver of APSRTC bus. His testimony is self-certifying statement. He attributed the negligence

to the rider of TVS Champ and also stated that there was an approach road of Chandrayanpalli village at the scene of offence and, at that road, the TVS Champ came in a zig-zag manner and hit the RTC bus which was going very slowly.

11. This is a case of death. The pillion rider of the TVS Champ, who was 22 years old, received fatal injuries in the accident and died. Unless the bus was driven at a high speed as spoken by PW1, the accident would not have occurred.

12. Moreover, it is the duty of the driver of the bus to be vigilant while crossing the approach roads either to blow the horn or to slow down the bus and watch whether any vehicles are coming from the approach road. Therefore, the negligence is on the part of the driver of APSRTC bus. Therefore, I do not see any valid grounds to interfere with the findings of the Tribunal in this regard.

13. It is further contended on behalf of the appellant that the Tribunal has taken the income of the deceased at Rs.5,000/- which is on the higher side. As the deceased boy was 22 years old and said to be a Carpentry mason, without any proof of income, the Tribunal has fixed his income at Rs.5,000/-, and therefore the income of the deceased has to be reduced.

14. As a matter of fact, as per the evidence of PW1, the deceased was aged 22 years and was hale and healthy, and was carpenter by profession, and there won't be any income proof for carpenters who work in unorganized sector. Therefore, the Tribunal has rightly

taken the income of the deceased at Rs.5,000/- per month which is as per the minimum wages and, therefore, the income of the deceased taken at Rs.5,000/- is not on a higher side.

15. It is appropriate to refer to the decision of the Supreme Court to take the income of the carpenter as Rs.6,000/- to Rs.12,000/-. It is also pertinent to note that in the light of the Apex Court's decision, the future prospects are to be taken into consideration.

16. Even if it is considered that the future prospects are taken into consideration by the Tribunal, even on that count, the income of the deceased taken was not on higher side. Therefore, I do not see any merit in this contention.

17. It is contended that the deceased was a bachelor by the date of accident and the Tribunal has deducted only 1/3rd from his income whereas 50% has to be deducted from his income towards personal expenditure.

18. As a matter of fact, the Tribunal has not taken into consideration the loss of future prospects though the deceased was said to be a carpenter. If the Tribunal had taken the loss of future prospects at 30% to 50%, his salary would have been increased to that extent and it would compensate the non-deduction of his salary by 50% towards personal expenditure. Therefore, in the instant case, there is no need to deduct 50% towards personal expenditure though the deceased was a bachelor in view of the fact that no future prospects were taken into consideration.

19. Therefore, I do not see any merit in this appeal, and the appeal is liable to be dismissed.

20. In the result, the appeal is dismissed, and the award passed by the Tribunal in O.P.No.32 of 2007, is confirmed. No costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDI SEVA SHYAM PRASAD, J

30 March, 2017

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THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD



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