

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 1537 of 2010

JUDGMENT:

This appeal is arising out of the Award dated 04.12.2008 in O.P. No.246 of 2006 on the file of the Special Judge for the trial of offences under SCs & STs (POA) Act-cum-VI Additional Metropolitan Sessions Judge – Additional Chairman, MACT-cum-XX Additional Chief Judge, at Secunderabad.

2. Brief facts of the case are that on 09.07.2006, at about 3:00 PM, while the deceased Ch. Balaraju was going to his work place i.e., Harsha Mess at SR Nagar, on foot, an RTC bus bearing No.AP-10Z-1773, driven by its driver at a high speed and in a rash and negligent manner hit the deceased due to which the deceased fell down and got crushed under the wheels of the bus and died instantaneously. The petitioners filed the claim petition claiming compensation of Rs.5,00,000/- on account of the death of the deceased against respondent APSRTC alleging that the accident occurred due to the rash and negligent driving by the driver of RTC bus.

3. The Tribunal, on consideration of the evidence, allowed the claim petition by awarding compensation of Rs.5,00,000/-. Aggrieved by the award passed by the Tribunal, the appellant-APSRTC preferred this appeal.

4. The points for consideration in this appeal are:

(i) Whether the Award passed by the Tribunal is under Section 163-A, or Section 166 of the Motor Vehicles Act, 1988?

(ii) Whether the compensation awarded by the Tribunal is excessive?

5. Heard the arguments of Sri N. Vasudeva Reddy, learned counsel for the appellant-RTC. None appeared for the respondents though notices were served.

6. Learned counsel for the appellant submitted that the Tribunal has decided Issue No.1 with respect to rash and negligence, holding as if the claim petition was filed under Section 163-A of the Act. The Tribunal held that the claim petition was filed under Section 163-A of the Motor Vehicles Act, 1988, so the petitioners need not plead or establish wrongful act or negligence of the owner of the vehicle or concerned person. Having observed that, the Tribunal has further stated that the evidence on record Exs.A1 to A3 proved that the driver of APSRTC bus had driven it in a rash and negligent manner. The said finding of the learned Judge of the Tribunal is the cause of action and one of the grounds for filing this appeal by the appellant.

7. On perusal of the evidence on record and the Award passed by the Tribunal, it is obvious that the Tribunal has given a clear and categorical finding on the negligence on the part of the driver of the APSRTC bus. The Tribunal placed reliance on the documents Ex.A1-FIR, Ex.A2-Charge sheet, and Ex.A3-Inquest report, and came to the conclusion that they proved the negligence of the driver of the bus. It is also observed by the Tribunal that no contra evidence is

produced by respondent-RTC to disprove the documentary proof Exs.A1 to A3, adduced by the petitioners.

8. It is pertinent to note that RTC has not examined any witness on their behalf to disprove the documents Exs.A1 to A3. It is the case of the petitioners that the accident occurred and the deceased died due to the rash and negligent driving by the driver of the RTC bus. The appellant-RTC did not choose to examine either the driver or the conductor or any passenger or passer-by of the bus to disprove the rash and negligent act on the part of the driver of the RTC bus.

9. Therefore, I do not see any force in the contention raised by the learned counsel for the appellant that the driver of the RTC bus was not rash and negligent in the light of the documentary evidence of Exs.A1 to A3.

10. Learned counsel for the appellant further contended that the compensation awarded by the Tribunal is highly excessive. The Tribunal has taken the income of the deceased as Rs.4,500/- per month, without there being any proof that the deceased was working in the Mess and was earning Rs.4,500/- per month. It is further submitted that there is discrepancy in the age of the deceased. The age of the mother of the deceased was shown as 35 years, whereas the age of the deceased was shown as 24 years, and that is why the Tribunal has taken the age of the mother as 40 years by the date of accident. In addition to the discrepancy of age, the Tribunal has not taken the correct multiplier. It is further submitted that as the deceased was unmarried by the date of accident, 50% of his income

has to be deducted towards his personal expenditure in the light of decision in Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another¹.

11. In the light of the submissions of the learned counsel for the appellant, it is obvious that there is no evidence on record to show that the deceased was working as Supervisor in a mess and was earning Rs.4,500/- and, therefore, his income can be taken into consideration as Rs.3,500/- per month. In fact, I am fortified by the ratio laid down by the Apex Court in Ramesh Singh v. Satbir Singh²; New India Assurance Company Ltd. v. Smt. Shanti Pathak³; Oriental Insurance Co. Ltd. v. Syed Ibrahim⁴; New India Assurance Co. Ltd., v. Kalpana (Smt)⁵, a decision of High Court of Karnataka at Bangalore in Sri Appayachari v. K. Vadivel and the New India Assurance Company Ltd., rep. by its Manager⁶ and a decision of High Court of Calcutta in United India Insurance Co. Ltd. v. Shri Buro Mahara⁷, for taking notional income of a labourer working in an unorganized sector.

12. Taking into consideration the income of the deceased as Rs.3,500/- per month, his annual income would come to Rs.42,000/-. Deducting 50% towards personal expenditure as he

¹ 2009 (6) SCC 121

² MANU/SC/7089/2008

³ MANU/SC/7776/2007

⁴ MANU/SC/7915/2007

⁵ (2007) 3 SCC 538

⁶ MANU/KA/3721/2013

⁷ MANU/WB/0139/2015

was unmarried person, his annual contribution to the family would come to Rs.21,000/-. Further, as per Sarla Verma (1 supra), the age of the deceased has to be taken into consideration for the purpose of calculation of loss of dependency. The multiplier applicable for the age of 24 years is '18'. Therefore, the loss of dependency would be $\text{Rs.}21,000 \times 18 = \text{Rs.}3,78,000/-$.

13. The Tribunal awarded compensation of Rs.10,000/- towards loss of love and affection, Rs.2,000/- towards funeral expenses and Rs.1,000/- towards transportation. Since we are re-calculating the compensation already awarded by the Tribunal, in order to award just and reasonable compensation, in view of the judgment of the Hon'ble Supreme Court in Ramilaben Chinubhai Parmar and Ors. V. National Insurance Co. and Ors⁸, an amount of Rs.50,000/- is awarded towards Conventional charges covering all the above three Heads.

14. Therefore, the total compensation awarded by the Tribunal is modified to Rs.3,78,000/- + Rs.50,000/-, which is Rs.4,28,000/-.

15. As far as rate of interest is concerned, the Tribunal has awarded 6% interest per annum. Since we are re-calculating the compensation in the light of Sarla Verma (1 supra), in the light of Dharampal and others Vs. U.P. State Road Transport Corporation⁹, the appropriate rate of interest would be 7.5% per annum. Therefore, the rate of interest awarded by the Tribunal at

⁸ MANU/SC/0356/2014

⁹ MANU/SC/7680/2008

6% per annum is enhanced to 7.5% per annum in the particular facts and circumstances of the case.

16. In the result, the appeal is partly allowed, by reducing the compensation awarded by the Tribunal from Rs.5,00,000/- to Rs.4,28,000/-, and enhancing the rate of interest from 6% per annum to 7.5% per annum. No costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

24th April, 2017

KSM



THE HON'BLE SRI JUSTICE G. SHYAM PRASAD



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