

THE HON'BLE MS JUSTICE J. UMA DEVI

M.A.C.M.A.No.3026 of 2005

JUDGMENT:

This Motor Accident Civil Miscellaneous Appeal is filed by the APSRTC, challenging the order, dated 23.06.2005, passed in M.V.O.P.No.9 of 2004, by the Chairman, Motor Accident Claims Tribunal – cum – I Additional District Judge, Cuddapah ('the Tribunal', for brevity).

2. Appellant herein is the first respondent and respondents herein are petitioners/claimants before the Tribunal. For the sake of convenience, the parties will be hereinafter referred as 'petitioners' and 'respondents' as they are arrayed in M.V.O.P.No.9 of 2004.

3. First petitioner is the wife, petitioners 2 to 4 are children, and petitioners 5 and 6 are the parents of the deceased Manga Venkata Subbaiah, a Government employee, who died in a fire accident that took place during the course of his travelling in the bus bearing registration No.AP-11-Z-387 belonging to the appellant-Corporation on the intervening night of 24/25.09.2002. The deceased was working as Attender in the office of Special Deputy Collector, Telugu Ganga Project, Mamillapalli, Cuddapah District. As instructed by his controlling officer, i.e., Special Deputy Collector, he had been to Hyderabad along with land acquisition appeal bundles to handover them in the office of the Government Pleader. He boarded the bus belonging to the appellant-Corporation bearing registration No.AP-11-Z-387 while undertaking his return journey to Cuddapah, on 24.09.2002 at 07:30 PM. When the

said bus reached the outskirts of Munagala village on the intervening night of 24/25.09.2002, all of a sudden, the bus caught fire. Though the inmates of the bus alerted the driver of the bus by raising hues and cries, the driver of the bus did not stop the bus and continued the driving the bus for ten minutes, even after the bus caught fire. On account of the said negligent act of the driver of the bus, 20 passengers died and the bus was gutted in fire. The deceased received 80% burn injuries on his body and was immediately shifted to Government Hospital, Kurnool, and there, he succumbed to injuries on the next day about 12:05 P.M. The police of Itikyala registered a case in crime No.63 of 2002 against the driver of the bus and filed charge sheet. After the death of the deceased in the said accident, the petitioners laid a claim for a compensation of Rs.8,00,000/- against the appellant contending that the deceased was aged 39 years by the date of accident and was working as Attender in the office of the Special Deputy Collector, Telugu Ganga Project, Mamillapalli and was earning Rs.5,998/- per month and that the deceased was the sole breadwinner in the family and due to his untimely death, his entire family was put to sudden untold hardship and contended further that the death of the deceased occurred only due to the recklessness and negligent act of the driver of the bus and they were to be paid compensation by the APSRTC.

4. The petition is not contested by the driver of the offending bus due to whose negligence the above mentioned accident took place. The APSRTC alone contested the case by filing elaborate counter denying the material averments mentioned herein. It is mainly contended by it

that the accident did not occur due to the negligent driving of the bus by its driver, but according to its contentions, it is only due to the mischievous acts of some unsocial elements/miscreants who travelled in the bus, the incident in question had taken place and that the driver of the bus was not at fault.

5. Based on the above pleadings, the Tribunal framed the following issues for trial:

1. Whether the death of the deceased by name Manga Venkata Subbaiah, S/o. Gangulaiah occurred on 24/25.09.2002 at Mid Night due to negligence of employees of APSRTC in allowing inflammable and combustible substances in the bus bearing No.AP-11-Z-387 resulting in fire accident and gutting of the bus in fire?
2. Whether the petitioners are entitled for compensation and if so, to what amount and from whom?
3. To what relief?

6. On behalf of the petitioners/claimants, the first petitioner – Manga Kumari (wife of the deceased) was examined as P.W.1; one V.Jaya Narasimhulu, a Junior Assistant working in the office of Telugu Ganga Project Unit – II, Mamillapalli, Cuddapah District, was examined as P.W.2; and, a person by name D.Venugopal who said to have travelled in the bus along with the deceased, was examined as P.W.3; and, Exs.A.1 to A.10 were marked. No oral or documentary evidence was produced by the respondents.

7. Relying on the oral evidence of PW.3 and Exs.A.2 to A.5, the Tribunal came to the conclusion that due to failure on the part of the driver of the bus to stop the bus immediately after it caught fire, the accident occurred and accordingly held the respondents 1 and 2 liable to

pay compensation to the petitioners/claimants. The Tribunal, on appreciation of evidence given by P.W.2 and the material particulars available in the case record, had awarded a total compensation of Rs.7,83,000/- on all the counts. Challenging the said Award passed by the Tribunal, APSRTC had filed the present appeal.

8. The learned Standing counsel for the APSRTC would submit that the driver of the bus was no way responsible for the occurrence of the accident. His contention was that though negligence was not proved, the appellant was held responsible to pay compensation to the petitioners/claimants by the Tribunal. The undisputed fact was that the bus caught fire all of a sudden while it was proceeding on Kurnool – Hyderabad highway when it reached the outskirts of Munagala village on the intervening night of 24/25/09.2002; The fact that the death of the deceased occurred due to burn injuries was not disputed by the appellants.

9. The appellant's main contention is that the Tribunal failed to notice that there was no negligence on the part of the driver of the bus and that some antisocial elements/miscreants who travelled in the bus were responsible for the accident. Their further contention was that the Tribunal ought to have taken the contribution of the deceased towards maintenance of his family members at Rs.3,200/- instead of Rs.4,000/-, since his net salary was only Rs.4,800/- per month as per the evidence given by P.W.2 through whom the Service Register of the deceased was produced; The Tribunal erred in applying the multiplier '16'. The appropriate multiplier to be applied was only '12' but not '16'.

Therefore, the Award passed by the Tribunal was not only incorrect but also would not stand to the test of judicial scrutiny. They also state that the rate of interest awarded by the Tribunal is exorbitant.

9. *Per contra*, the learned counsel for the respondents/claimants, while supporting the award of the Tribunal, would submit that the Tribunal awarded just and reasonable amount as compensation and that no plausible or reasonable grounds were made out by the appellants to get the Award set aside. He contended that the petitioners/claimants lost the sole breadwinner of their family and that after the death of the deceased, the petitioners/claimants are put to great hardship and that the Tribunal, relying on the evidence of P.W.3 who travelled in the offending bus along with the deceased on the fateful day, who during the course of his examination stated that the bus was not stopped by the driver soon after it caught fire and it was stopped after travelling a distance of 4 to 5 kilometres on hearing the cries of the passengers, had come to a right conclusion that there was negligence on the part of the driver of the bus and his negligent act resulted in death of more than 15 persons including the deceased and bodily injuries to several persons etc.

10. The only point that arises for consideration in this appeal is, whether the appellant is able to make out any valid grounds to get the Award of the Tribunal set aside.

11. Insofar as the issue relating to negligence on the part of the driver of the bus in causing the accident is concerned, the evidence of

P.W.3 assumes importance. P.W.3 is the person who travelled in the offending bus on the fateful day. He has given evidence about the manner in which the bus was driven at the relevant point of time. His evidence is clear and categorical as to non stopping of the bus by its driver soon after it caught fire. Despite the attempts made by the passengers to alert the driver by raising hue and cry, the bus was not stopped. The petitioners/claimants, to support their contentions, have produced Exs.A.1 – Certified Copy of FIR in Crime No.63 of 2002; Ex.A.2 – Certified Copy of inquest report; Ex.A.3 – Certified Copy of Post Mortem Certificate; Ex.A.4 – Certificate of death issued by Municipal authorities. The Tribunal, relying on the evidence of P.W.3 and the relevant documentary evidence, has come to the conclusion that the accident occurred due to negligent driving of the bus by its driver. Admittedly, no evidence of any sort is adduced by the appellant to prove their contentions that there was no negligence on the part of the driver of the bus. In the instant case, except making a bald confession that there was no negligence on the part of the driver of the bus, the appellant did not choose to adduce any evidence to support the above mentioned plea. Though the driver of the bus is competent to speak about the accident, he has not been examined. No attempt is made by the appellant to establish their contention that the bus driver was not at fault. In the absence of any rebuttal evidence disproving the testimony of P.W.3, I do not find any reason to dissent from the view taken by the Tribunal on the point of negligence, if any, attributed to the driver of the bus.

12. Insofar as the issue relating to the quantum of compensation awarded by the Tribunal is concerned, the claimants have produced the Salary Certificate of the deceased to show that he was drawing net salary of Rs.5,513/- per month. Ex.A.8 was the certificate issued by the M.R.O. stating that petitioners 1 to 4 are the only legal heirs of the deceased. P.W.2 produced the Service Register of the deceased in which, the date of birth of the deceased was recorded as 18.04.1963. Thus the evidence of definite nature was available insofar as the age of the deceased as on the date of his death. The appellants did not choose to adduce any evidence rebutting the oral and documentary evidence available in the case, which was clear and categorical as to the income particulars and the age of the deceased etc. Taking into consideration all these aspects, the Tribunal had rightly taken the monthly income of the deceased at Rs.5,513/- and after deducting an amount of Rs.1,513/- towards his personal expenditure and on applying the multiplier '16', assessed a sum of Rs.7,68,000/- towards loss of income. The Tribunal awarded Rs.5,000/- towards consortium and Rs.2,000/- to each of the petitioners under the head of loss of love and affection. Under these circumstances, the Award passed by the Tribunal cannot be held as unreasonable. In my view, the Award impugned is not suffering from any factual or legal infirmities.

13. For the above reasons, I hold that the appellant is not able to make out any grounds, much less any valid grounds, to set aside the Award. The appeal is devoid of any merits and is hereby dismissed. However, in view of the settled legal position, the rate of interest on the

compensation awarded by the Tribunal is reduced from 9% per annum to 7.5% per annum from the date of petition till realisation.

14. Accordingly, the appeal is allowed in part and the Award passed by the Tribunal is modified only to the extent of reducing the rate of interest from 9% per annum to 7.5% per annum. The rest of the Award passed by the Tribunal is hereby upheld with necessary modifications. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand closed.

22nd March, 2017.
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JUSTICE J.UMA DEVI