

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER**M.A.C.M.A.NO.3097 OF 2005****JUDGMENT:**

Aggrieved by the award passed in O.P.No.364 of 2004, dated 21.08.2004 by the Chairman-cum-Motor Accident Claims Tribunal (II Addl. District Judge), Nalgonda at Suryapet, this appeal is filed by the APSRTC, who is 6th respondent in the claim petition.

2. The parties herein are referred as arrayed in the Original Petition.

3. Learned counsel for the 6th respondent (APSRTC) would submit that the findings of the Tribunal are contrary to law and the accident occurred due to rash and negligent driving of the driver of the tractor and trolley bearing Nos. APL 3789 and 5764. A report was also lodged against the driver of the tractor and trolley. There is no iota of evidence to believe that the accident occurred due to rash and negligent driving of the driver of the RTC bus. The Tribunal granted compensation of Rs.1,00,000/- with 9% interest against the 6th respondent, which is erroneous and not sustainable in law. The amount of compensation granted is exorbitant and ultimately prayed to set aside the award passed against the 6th respondent (appellant herein)

4. Learned counsel for the claimants would submit that there is specific evidence of P.W.2, who is an eye witness to the occurrence of the accident that RTC bus dashed the tractor and trolley from backside and the accident occurred due to rash and negligent driving of the driver of the RTC bus only. The Tribunal had rightly awarded compensation against the 6th respondent. The Tribunal took the age of the mother of deceased at 58 years and after applying multiplier '8', arriving the income of the deceased at Rs.1500/- per month. After deducting personal expenses of the deceased, finally granted total compensation of Rs.1,00,000/-and the same cannot be said to be exorbitant.

Therefore, there are no merits in the appeal and ultimately prayed to dismiss the appeal.

5. In view of contentions put forth by both sides, the point for determination is whether the compensation of Rs.1,00,000/- granted in favour of the claimants is exorbitant and excessive and whether the Tribunal rightly directed the 6th respondent to pay compensation to the claimants?.

6. This O.P. was filed on account of death of Ramakrishna, son of the claim petitioners 1 and 2. The case of the claimants is that their son died due to rash and negligent driving of the tractor and trolley by its driver. The original owner of the tractor and trolley expired during the pendency of the O.P. Therefore, his Legal representatives were brought on record as respondents. Thereafter, one more L.R. of the owner died So, the other respondents were on record. Respondent Nos. 4 and 5, who are the sons of the owner contended that the driver of the tractor was in collusion with the RTC and due to the negligence of the RTC bus only, the accident occurred. Thereafter, the 6th respondent-APSRTC was added. As per the records, a report was given to the police and the charge sheet reveals the rashness and negligence on the part of the driver of the tractor and trolley. As per the documents, P.W.2 is an eye-witness to the occurrence of the accident and consequential death. There is specific evidence of P.W.2 that he along with the deceased was traveling in the tractor and trolley. The said tractor and trolley was driven in zigzag manner with high speed by its driver, at the same time, one RTC bus came in high speed behind the tractor and dashed to the trolley of the tractor. Due to that, the trolley turned turtle. The deceased fell down on the ground from the trolley and sustained injuries and then succumbed to those injuries. The learned Magistrate held that the driver of the tractor was not guilty of the offence and acquitted him. In view of the evidence of P.W.2 and in view of acquittal recorded in criminal case, the trial Court held that the accident and death occurred in this case due to rash and negligent driving of the RTC bus.

7. The contention of the 6th respondent (appellant herein) is that the accident occurred due to rash and negligent driving of the tractor and trolley by its driver. Neither the driver of the RTC bus nor any of the witness was examined to substantiate its contention. P.W.1, mother of the deceased had spoken about the alleged loss to her and also that her son died in the motor accident. There is also evidence of R.W.1 (4th respondent) i.e., son of owner of the tractor and trolley that when the tractor driver did not give side to the RTC bus, the RTC bus dashed the tractor from backside. He also spoken that the deceased used to earn Rs.1200/- per month as mason. Absolutely, there is no evidence from the side of 6th respondent-RTC to rebut this evidence. The contentions raised on behalf of the 6th respondent-RTC are without evidence. The finding of the Tribunal with regard to the involvement of RTC bus in the accident and causing the death in rash and negligent driving of RTC bus in this case are borne by the record. There is nothing to take a different view. The Tribunal had simply calculated the loss of earnings etc., and awarded compensation of Rs.1,00,000/- in favour of the claimants and no interference is warranted. The appeal is devoid of merit and is liable to be dismissed.

8. Accordingly, the appeal is dismissed confirming the award passed in O.P.No.364 of 2004, dated 21.08.2004, by the Chairman-cum-Motor Accident Claims Tribunal (II Addl. District Judge), Nalgonda at Suryapet No order as to costs. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

DR.SHAMEEM AKTHER, J

DATED: 03-11-2017.

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