

THE HON' BLE SRI JUSTICE M. S. K. JAISWAL

M.A.C.M.A .No. 443 of 2010

JUDGMENT:

The appellant/ State Road Transport Corporation preferred this appeal questioning the Award of the Chairman, Motor Vehicle Accidents Claims Tribunal -cum- III Additional District Judge, Karimnagar, dated 09.12.2009 in MVOP.No.165 of 2008, by and under which the Tribunal has awarded a total compensation of Rs.2,87,520/- together with interest at 7.5% per annum, for the death of the deceased – Mani Babu, aged about 58 years in the accident said to have taken place on 19.02.2007 on National Highway No.7, near Medchal Check Post, involving a RTC Bus, bearing No.AP-11-Z-5077, being driven by the 1st respondent, and owned by the appellant/ Corporation.

2. The brief facts of the case are that on 19.02.2007, the deceased - Mani Babu, who was working as Security Guard in Shela Forms, at IDA, Hyderabad, after completing his duty at about 9.30 p.m., proceeding on his bicycle on National Highway No.7, and while the deceased crossing the road near Medchal Check-Post, the above said RTC Bus, driven by the 1st respondent in a rash and negligent manner with high speed came from behind and hit him, due to which the said Mani Babu was thrown on to the road, and died on the spot, due severe head injury. The Medchal Police registered an offence, vide Crime No.66/ 07 against the Respondent No.1 for the offence under Section.304-A of the Indian Penal Code, investigated and filed charge sheet against the 1st respondent/driver of the Bus. The petitioner/ claimant is the wife of the deceased, who is his

dependant, and due to the sudden death of her husband, she lost her livelihood. Hence, the claim.

3. The appellant/ Corporation filed a counter contending that the driver of the bus is not responsible for the accident, that the accident did not take place in the manner in which it is alleged, that the bus did not hit the deceased and therefore the Corporation is not liable to pay any compensation.

4. During the course of trial, the claimant examined herself as PW-1, and got examined PW-2, Assistant Personal Officer in ISS Private Limited to prove the employment of the deceased under the said Security Services and about his salary at the rate of Rs.3785/- per month, and marked Exs.A.1 to A7 to prove her claim. However, on behalf of Respondents/ Corporation, no witness was examined and no document was marked. After hearing both sides and considering the entire material on record produced before it, the Tribunal awarded the compensation as stated above. Aggrieved by that, the present appeal is preferred by the Corporation.

5. The learned counsel appearing for the appellant/ Corporation submits that absolutely there is no evidence to establish that the accident took place due to the rash and negligent driving of the 1st respondent, the driver of the RTC Bus, and therefore, the Tribunal has erred in fixing the liability on the appellant-Corporation. It is further submitted that the Tribunal has not taken into consideration the proper multiplier or the income of the deceased and awarded the compensation, which is exorbitant.

6. On the other hand, the learned counsel appearing for the claimant submits that the claimant has got examined independent witness PW-2 to prove the employment and salary of the deceased, and all the documents that are produced before the Tribunal under Exs.A.1 to A.7 are official documents, which clearly prove the claim of the claimant. Ex.A5 is the certified copy of the observation report with rough sketch, which clearly shows that the accident is occurred due to the rash and negligent driving of the RTC bus. The learned counsel therefore submits that the Tribunal has properly taken into consideration the documents and held that the accident was due to the rash and negligent driving of the 1st respondent/driver, which is owned by the appellant/ Corporation. Therefore, the appeal is liable to be dismissed.

7. Heard the learned counsel appearing for both the parties and perused the material on record.

8. It is not disputed about the accident that was occurred on the date, time and place, in which the husband of the claimant i.e., Mani Babu died on the spot, due to the head injury. However, the driver of the bus spoke that he was proceeding slowly after having started from the bus-stop, which was just about 40 to 50 yards away, and at that time the deceased was crossing the road on his cycle, without observing a lorry coming behind and got confused himself, and with the said confusion the deceased hit the road divider and fell on the bus, and therefore, the 1st respondent is not responsible for the said accident. While, it is no doubt true that the claimant failed to produce any independent witness, but all the

documents that are produced by the claimant in evidence are prepared by a responsible Police officer, that too after completing the required investigation. All the exhibits produced by the claimant clearly show that the accident did not take place in which manner it is spoken to by the driver of the bus as RW-1. If the sketch map under Ex.A.5 carefully perused, it completely falsifies the evidence of the driver/ RW-1. It manifests that RW-1 gave evidence to exclude him from the liability of being responsible for the accident during his driving the bus. The sketch map under Ex.A.5 was drawn by the Investigating Officer in the presence of two independent panch-witnesses, during the spot inspection, and it clearly proves that the accident took place on the extreme left side of the road and the bus was proceeding from Hyderabad to Medchal. If the version of RW-1 is true, the accident should be near the divider, but not on extremely left side *berm* of the road. Therefore, it clearly proves that the accident took place when the deceased was extremely on the left side of the road and the bus came in a rash and negligent manner and dashed against the deceased. Coupled with Ex.A5, there are other documents, which *prima facie* establish that it is RW-1, who is responsible for the accident. The tribunal has taken into consideration the entire evidence on record and after discussing the same minutely came to the conclusion that it is the driver of the RTC bus, who is responsible for the accident, which do not warrants interference.

9. With regard to the quantum of compensation, the Tribunal has taken into consideration the oral evidence of PW-2 and also the

salary certificate, Ex.A7, which certifies that the deceased was working as Security Guard and earning an amount of Rs.3785/- per month. Since the deceased was aged about 58 years by the time of accident, the proper multiplier '9' was applied and after deducting 1/3 towards personal expenditure, the loss of earning to the family has been worked at Rs.2,72,520/-. The Tribunal has added to it, a sum of Rs.5,000/- each towards loss of consortium, funeral expenses and transportation of dead body. Thus, the Tribunal awarded a total compensation of Rs.2,87,520/-. The procedure adopted by the learned Tribunal is in accordance with law, based on well established principles, and therefore, do not warrant any interference. The said compensation awarded for the death of the deceased is just and reasonable and it cannot be said to be in any way excess, exorbitant or exaggerated. Therefore, there are no merits in the appeal, and the same is liable to be dismissed.

10. Accordingly, the appeal is dismissed, confirming the judgment and decree under appeal awarding compensation. There shall be no order as to costs. Consequently, the pending miscellaneous petitions, if any, shall stand closed.

M.S.K.JAISWAL, J

Date: 15.06.2017

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Dt. 15..06..2017