

HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 1298 of 2010

JUDGMENT:

This appeal is arising out of the order dated 12.04.2010 passed in MVOP No.449 of 2008 on the file of the Chairman, Motor Accidents Claims Tribunal-cum- District Judge, Ongole.

2. The brief facts of the claim petition are as follows:

This petition is filed by the petitioners who are wife and children of the deceased Under Section 163-A & 168 of the Motor Vehicles Act claiming compensation of Rs.5 lakhs as dependants for the death of P.Venkata Kondaiah, aged about 38 years, agricultural and others works, earning Rs.3500/- per month for short as deceased in a motor accident alleging that on 03.04.2008 at about 4.40 p.m. while the deceased along with his two friends were proceeding towards Kodigumpala village after attending their relatives marriage at Nagireddypalli village and when they were proceeding through Morapaguntala and Kottalapalli villages near a turning, the A.P.S.R.T.C. bus bearing No. AP-10-Z-7883 being drive by it's driver in a rash and negligent manner dashed against the motor cycle resulting the deceased died on the spot and the remaining two sustained injuries an the accident was registered in Crime No.4 of 2008 of Veligandla Police Station, Under Section 304-A IPC and that the respondents are liable to pay compensation.

3. First respondent remained exparte. Second respondent filed written statement denying all the material allegations made in the petition including manner of accident and contended that there is no rash or negligent driving on the part of the driver of APSRTC bus, that the

accident was occurred due to negligence of the rider of the motorcycle who drove the motorcycle in a rash and negligent manner and dashed against the bus in opposite direction despite the bus was stopped on the left side road margin, that the claim of the petitioners is highly excessive and arbitrary and prays to dismiss the petition against APSRTC.

4. The appellants are the claimants before the Tribunal filed M.V.O.P.No.449 of 2008 claiming compensation of Rs.5 lakhs and the Tribunal awarded compensation of Rs.3,33,000/-. The appellants aggrieved by the quantum of compensation has sought for enhancement.

5. The points for consideration in this matter are:

1) Whether the appellants are entitled for enhancement of compensation?

2) Whether there is any contributory negligence on the part of the rider of the motorcycle in the accident?

6. Heard the learned counsel for the appellants and the respondents.

7. The learned counsel for the appellants submitted that the Tribunal wrongly held that there is contributory negligence on the part of the rider of the motorcycle. Though, there is evidence on record to show that there is no contributory negligence on his part, the Tribunal has fixed the liability at 20% for the rider of motorcycle. Therefore, the finding of the Tribunal is liable to be set aside. In fact, this is a case of collision between the motorcycle and an R.T.C. bus.

8. The learned counsel for the respondents submitted that the evidence of RW.1 the driver of the R.T.C. bus reveals that he was the driver of the R.T.C. bus and while he was driving the bus in the route from Kovilampadu to Kanigiri near Nagireddypalli, there was a speed braker

and after crossing the same, while the bus was negotiating a curve, three persons coming on wrong side in opposite direction unable to control their bike, dashed against the bus at the front side of the bus. Then RW-1 stopped the bus. It is the evidence of RW-1 that due to rash and negligent driving of the motorcycle which came in the wrong side and the rider under intoxication condition was responsible for the accident.

9. The evidence of RW-1 reveals that he was the driver of the R.T.C. bus and because of the negligence on the part of rider of the motorcycle who was under intoxication condition, the accident has occurred. It also reveals that three persons were going on a motorcycle at the time of the accident.

10. The learned counsel for the appellants submitted that there is no negligence on the part of the rider of the motorcycle and RW-1 being the driver of the R.T.C. bus was an interested witness and therefore, he spoke against the rider of the motorcycle in order to escape his liability. It is further submitted that the police registered a case against the driver of the bus. But, the Tribunal has not considered that aspect and fixed the liability at 20% for the rider of the motorcycle.

11. The learned counsel for the appellants further submitted that PW-1 is the wife of the deceased. But, she is not the eyewitness to the accident. She deposed basing on the information received from other persons,

12. The learned counsel for the respondents submits that the driver of the crime vehicle is examined as RW-1. He stated in his evidence that the accident occurred due to the rash and negligent driving of the rider of the motorcycle. As there is no other independent eyewitness to the accident except the driver of the R.T.C. bus. No doubt, the driver of the bus is the accused in the crime and naturally, he would be interested witness in the case. There is no other material coming on record to show

that the accident occurred due to the rash and negligent driving of the rider of the motorcycle. Obviously, the police registered a case against the driver of the R.T.C. bus for his rash and negligent act. It is pertinent to note that the bus must be containing so many passengers including the conductor. But, the R.T.C. did not choose to examine any one of those persons who might be the witnesses to the accident. Therefore, the findings of the Tribunal that the accident occurred due to the contributory negligence of the motorcycle cannot be accepted.

13. The learned counsel for the appellants submitted that the Tribunal has awarded inadequate compensation under various heads. It is mainly contended that the income of the deceased was not correctly taken and even as per the minimum wages Act, the income of the deceased is to be taken into consideration as Rs.4500/- per month in the absence of proof of income.

14. The learned counsel for the respondents submitted that there is no proof for the income of the deceased that he was earning Rs.3,000/- per month and therefore, the Tribunal has rightly taken into consideration his income as Rs.3,000/- per month. As far as this contention is concerned, the claim of the appellants is that the deceased was earning Rs.3,500/- per month. But, the Tribunal has taken Rs.3,000/- per month. Even as per the Minimum Wages Act, if the contention of the appellants is accepted, the income of Rs.3,500/- per month can be taken into consideration for the purpose of calculation of compensation. It is further submitted that the deductions towards personal expenses of the deceased would be $\frac{1}{4}$ th and not $\frac{1}{3}$ rd as taken by the Tribunal. The appellants are four in number who are dependants on the income of the deceased. In the light of the case of SARLA VERMA (SMT) AND OTHERS v. DELHI TRANSPORT

CORPORATION AND ANOTHER¹, if there are 4 to 6 dependants, the deduction towards personal expenses should be 1/4th. There is no dispute with regard to multiplier applied by the Tribunal for the deceased aged 38 years as 16. The income of the deceased can be taken as Rs.3,500/- per month, and his annual income comes to Rs.3,500/- x 12 = Rs.42,000/- and after deducting 1/4th of it i.e. Rs.10,500/-, the contribution to the family comes to Rs.31,500/- per annum and the multiplier applicable is 16. On calculation, it comes to Rs.31,500/- x 16 = Rs.5,04,000/-. The appellants are entitled for compensation of Rs.5,04,000/- towards loss of dependency.

15. It is further contended that the Tribunal has awarded Rs.32,000/- towards loss of estate, consortium and funeral expenses which requires to be enhanced.

16. In the light of the decision reported in a decision of the Apex Court in RAMILABEN CHINTUBHAI PARMAR v. NATIONAL INSURANCE COMPANY², the conventional amount of Rs.50,000/- is awarded, by enhancing the award of the Tribunal of Rs.32,000/- to Rs.50,000/-.

17. It is further submitted that the Tribunal has not awarded any amount towards loss of love for the children. Therefore, as a matter of fact, under conventional head, all the amounts are awarded and therefore, I do not see any valid ground to award any compensation under the head loss of love and affection for the children.

18. In the result, the appeal is allowed by modifying the award passed by the Tribunal enhancing the compensation from Rs.3,33,000/- to Rs.5,54,000/- (Rupees five lakhs fifty four thousand only) with proportionate costs and interest at 9% per annum from the date of the petition till realization. The respondents are directed to deposit the compensation

¹ 2009(6) SC 121

² LAWS(SC) -2014-4-67

amount within two months from the date of receipt of a copy of this order. The appellants are directed to pay the court fee over and above the claim awarded within one month from the date of receipt of this order. There shall be no order as to costs. As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

G. SHYAM PRASAD, J

Date:20.03.2017.
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HON'BLE SRI JUSTICE G. SHYAM PRASAD



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