

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.2286 OF 2008

JUDGMENT:

1. This Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), is preferred by the appellant-insurer, aggrieved by the order dated 28.03.2007 passed in M.V.O.P. No.32 of 2001, by the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Chittoor (for short, 'the Tribunal'); wherein the Tribunal awarded the compensation of Rs.2,25,000/-, against the original claim of Rs.6,00,000/-, with proportionate costs and interest at the rate of 7.5% p.a. from the date of petition till realization, making respondents 2 and 3, who are the owner and insurer of the Tempo Trax bearing registration No.AP-03D-6768 (for short, 'the crime vehicle'), jointly and severally liable to pay the compensation, apportioning that both the petitioners are entitled for equal compensation, dismissed the claim against the 1st respondent – A.P.S.R.T.C.

2. Appellant herein is the 3rd respondent – insurer, 4th respondent herein is the 2nd respondent, owner of the crime vehicle, 3rd respondent herein is the 1st respondent – A.P.S.R.T.C. and respondents 1 and 2 herein are the claim petitioners, who filed a petition before the Tribunal, under Section 166(1)(a) of the Act claiming compensation of Rs.6,00,000/- on account of the death of their son, namely, J. Suryanarayana (hereinafter referred to as 'the deceased'), in a motor vehicle accident occurred on 04.10.2000.

3. The parties are referred to as arrayed before the Tribunal.

4. The case of the petitioners, as narrated in the petition, in brief, is that on 04.10.2000 at about 01:20 p.m., when the deceased and others

were travelling by the crime vehicle, from Kuppam to Tirupati, to attend the Chief Minister's programme at Tirupati, and when the crime vehicle reached near Mordhanapalle village, the driver of the crime vehicle drove the same at high speed, in a rash and negligent manner, and dashed against the A.P.S.R.T.C. bus bearing registration No.AP-10Z-5356, which was coming in their opposite direction; as a result of which, the deceased sustained severe injuries and succumbed on the spot. Except one passenger, including the deceased herein, the other passengers travelling by the crime vehicle died on the spot. A case in Crime No.66 of 2000, for the offences punishable under Sections 304-A, 337 and 338 I.P.C., was registered by the Yadamari P.S. against the driver of the crime vehicle. The deceased, while at the time of accident, was working as tailor and artist, earning Rs.8,000/- per month and contributing the same to the petitioners. The petitioners, who lost their son, have lost his financial support throughout their life, suffered mental shock and agony, filed the petition seeking compensation of Rs.6,00,000/- against the respondents 1 to 3.

5. Respondent No.2, owner of the crime vehicle, remained *ex parte* before the Tribunal.

6. Respondents 1 and 3, who are the A.P.S.R.T.C. and insurer of the crime vehicle, filed separate counters denying the averments made in the petition. Respondent No.1 – A.P.S.R.T.C. contended that the age, occupation and income of the deceased be put to strict proof of the same. He further contended that the burden is on the petitioners to prove that they are the legal heirs of the deceased. There is no rashness and negligence on the part of the driver of R.T.C. Bus and further contended that the claim of the petitioners is excessive. As the crime vehicle belonging to the 2nd respondent was insured with the 3rd respondent, if any

compensation is payable to the petitioners, they are only liable to pay the compensation. Whereas, respondent No.3 – insurer contended the accident occurred due to the rash and negligent driving of the driver of 1st respondent – A.P.S.R.T.C. but not due to the rash and negligent driving of the driver of crime vehicle. The driver of the crime vehicle was not having valid and effective driving license at the time of the accident. Therefore, the 3rd respondent - insurer is not liable to pay compensation to the petitioners and sought for dismissal of the Petition against him.

7. The Tribunal, after framing issues and, considering the evidence of P.Ws.1 and 2, and the documents Exs.A.1 to A.6 and Ex.B.1, awarded the compensation of Rs.2,25,000/-, as stated hereinabove.

8. Aggrieved by the quantum of compensation awarded by the Tribunal, Respondent No.3-insurer of crime vehicle preferred the present appeal seeking to set-aside the order.

9. Heard the arguments of learned standing counsel for the appellant-insurer and the learned counsel appearing on behalf of respondents-petitioners. In spite of service of notice, none entered appearance on behalf of the Respondents 3 and 4, who are the A.P.S.R.T.C. and owner of the crime vehicle.

10. Learned standing counsel appearing on behalf of the appellant-insurer submitted that the findings of the Tribunal are contrary to law and facts. The Tribunal has taken Rs.2,000/- p.m. as income of the deceased, which is excessive; further, the Tribunal erroneously relying on Ex.A-1, certified copy of F.I.R., and its earlier orders, with regard to the same accident, in M.V.O.P Nos.481 of 2000 and 31 of 2001, tagged the liability only on respondents 2 and 3; instead, it ought to have taken into consideration the head on collision between the crime vehicle and the

A.P.S.R.T.C. bus and held that the 1st respondent is also liable to pay compensation, and also contended that the compensation awarded by the Tribunal is excessive, prayed to allow the Appeal setting-aside the impugned order.

11. *Per contra*, learned counsel appearing on behalf of the respondents-claim petitioners contended that the Tribunal had rightly taken the monthly income of the deceased as Rs.2,000/- p.m. and awarded a compensation of Rs.2,25,000/-, on all scores, which is just and reasonable but not excessive, and directed that the respondents 2 and 3 alone are liable to pay the compensation; rightly dismissed the claim against the 1st respondent - A.P.S.R.T.C. and, ultimately, prayed to dismiss the Appeal, relied on a judgment of this Court in M.A.C.M.A. No.3378 of 2005, dated 18.09.2014, wherein, this Court dismissed the Appeal preferred by the appellant – insurer, pertaining to the same accident.

12. In view of the rival contentions put forth on behalf of both the counsel, the points that arise for determination are:

- 1) Whether the accident occurred due to rash and negligent driving of the Tempo Trax bearing registration No.AP-03D-6768 or due to the A.P.S.R.T.C. bus bearing registration No.AP-10Z-5356?
- 2) Whether the impugned order is liable to be set-aside?
- 3) To what result?

13. **POINT No.1**: Admittedly, the deceased is son of the petitioners. The specific evidence of P.W.1, father of the deceased, is that he has two sons and one of his sons, namely, J. Suryanarayana, died in the accident, which took place on 04.10.2000, due to the rash and negligent driving of

the driver of crime vehicle. Though both the drivers attributed negligence against each other, the evidence of P.W.2, who is an injured eye witness to the accident, who traveled by the crime vehicle on the date of accident, is that due to bursting of one of the tyres of the crime vehicle, the accident occurred. P.Ws.1 and 2 attributed negligence against the driver of the crime vehicle. Admittedly, the deceased herein and other passengers traveling by the crime vehicle succumbed to the injuries on the spot and P.W.2 sustained severe injuries. The petitioners in support of their claim marked Exs.A-1 to A-6. Ex.A-1 is the certified copy of F.I.R., Ex.A-2 is the certified copy of inquest report, Ex.A-3 is the certified copy of Accident Information Report, Ex.A-4 is the S.S.C. marks certificate, Ex.A-5 is the certificate issued by the President, Artists and Painters Welfare Association, Kuppam and Ex.A-6 is the salary certificate of the deceased, issued by his employer. The evidence of P.W.2, injured eye witness to the accident, is corroborated with the evidence of P.W.1, father of the deceased, and the documents referred above, categorically proved the rash and negligence on the part of the driver of crime vehicle. No evidence was adduced on behalf of the respondents to discredit the testimony of the claim petitioners with regard to the rash and negligent driving of the crime vehicle. There is ample evidence on record to prove that the deceased succumbed to the injuries due to the rash and negligent driving of the driver of crime vehicle and the Tribunal rightly held that the respondents 2 and 3, being owner and insurer of the crime vehicle, are jointly and severally liable to pay compensation to the petitioners and dismissing the claim against the 1st respondent – A.P.S.R.T.C. The finding of the Tribunal is based on record and evidence. No other finding can be substituted on this score.

14. **POINT Nos.2 and 3:** As far as awarding of compensation is concerned, the Tribunal has taken all the facts and circumstances into consideration and awarded a compensation of Rs.2,25,000/- against the original claim of Rs.6,00,000/-. The petitioners filed Ex.A-6, salary certificate, showing the income of the deceased as Rs.8,000/- p.m. but failed to examine its author, it was disbelieved by the Tribunal. However, the Tribunal took his approximate income as Rs.2,000/- p.m. which would come to Rs.24,000/- per annum. As the family members of the deceased are less than 3 in number, deducted 1/3rd towards his personal and living expenses, which came to Rs.16,000/-, took the multiplier '13', which is applicable to the age group of the mother of the deceased *i.e.*, 45 years relying on the II Schedule of the Act, calculated the compensation to be paid under the head of loss of earnings as Rs.2,08,000/-. In addition to this, awarded an amount of Rs.15,000/- towards loss of estate and Rs.2,000/- towards funeral expenses. In all, the Tribunal awarded a total compensation of Rs.2,25,000/-, as stated hereinabove. Hence, the finding of the Tribunal in awarding the aforesaid compensation and tagging the responsibility on the 2nd and 3rd respondents cannot be faulted and no other opinion can be substituted.

15. In view of the facts and circumstances, all the submissions canvassed on behalf of the appellant-insurer do fail and there is nothing to interfere with the well reasoned order passed by the Tribunal.

16. In the result, the Appeal is dismissed.

17. As a sequel, pending miscellaneous petitions, if any, shall stand dismissed. No order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 10.03.2017.
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HON'BLE Dr. JUSTICE SHAMEEM AKTHER

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M.A.C.M.A. No. 2286 OF 2008

Date. 10.03.2017

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