

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A. No. 553 OF 2011

JUDGMENT:

This appeal is filed by the appellant/APSRTC under Section 173 of the Motor Vehicles Act, 1988, aggrieved by the award and decree dated 27.01.2009 passed in O.P.No.153 of 2007 by the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge (FTC), Ranga Reddy District at L.B.Nagar, wherein and whereby the Tribunal granted compensation of Rs.4,78,000/- to the claimants against the claim of Rs.5 lakhs for the death of one K.Sudershana Chary (hereinafter referred to as 'the deceased') in the accident occurred on 16.01.2007.

2. The respondents/claimants are the dependants of the deceased. The 1st respondent is the wife; respondents 2 to 5 are the children; and 6th respondent is the mother of the deceased. The claimants filed the claim petition for Rs.5 lakhs, alleging that on 16.01.2007 at about 4.00 p.m., while the deceased was proceeding on his Bajaj Chetak Scooter bearing No.AES 2269 from Toopan market towards Hyderabad side on the extreme left side of the road and when he reached the outskirts of Manoharabad village on NH7, one APSRTC bus bearing No.AP11Z 5565 of Bansiwada depot, came in a rash and negligent manner with high speed and dashed against the scooter of the deceased, as a result the

deceased sustained multiple fracture injuries and head injury and while shifting to Gandhi Hospital, he succumbed to the injuries.

The respondents/claimants claimed compensation of Rs.5 lakhs for the death of the deceased stating that was aged about 38 years at the time of accident, hale and healthy and used to earn Rs.5,000/- per month by working as a Carpenter. Due to the sudden demise of the deceased, the claimants suffered mental agony and lost future support.

3. The appellant/respondent filed counter denying the averments of the claim petition and disputed the date, time, place and mode of the accident. It is further averred that there was no negligence on the part of the driver of the bus and the accident occurred only due to the negligence on the part of the deceased.

4. Based on the pleadings, the Tribunal framed the following issues:

- 1) Whether the pleaded accident is occurred resulting in the death of the deceased K.Sudarshan Chary, due to the rash and negligent driving of the APSRTC Bus bearing No.AP-11Z-5565, by its driver?
- 2) Whether the petitioners are entitled to compensation, and if so, what quantum and what is the liability of the respondents?
- 3) To what relief?

5. During the course of trial, on behalf of the respondents/claimants, PWs 1 to 3 were examined and got marked Exs.A.1 to A.6. On behalf of the appellant, the driver of the RTC bus was examined as RW1, but no documents were marked.

6. The Tribunal, having considered the evidence of PW3, who is a injured eye-witness to the accident, and Exs.A.1 to A.6, came to the conclusion that due to rash and negligent driving of the driver of the RTC bus bearing No.AP11Z 5565 of Bansiwada depot, the accident occurred, in which the deceased sustained severe injuries and died while shifting to Gandhi Hospital. Though the driver of the RTC bus was examined as RW1, nothing was elicited to disprove the rash and negligent driving of the vehicle by him. Therefore, the Tribunal held the Issue No.1 in favour of the respondents/claimants.

7. With regard to Issue No.2, the Tribunal based on the evidence of PW2 and Ex.A.6, held that due to non-maintenance of registers by PW2, the Tribunal was unable to assess the salary of the deceased as Rs.5,000/-. However, the Tribunal has taken the reasonable amount of Rs.3,500/- per month and came to the conclusion that the annual income of the deceased as Rs.42,000/- per annum. The Tribunal after deducting the 1/3rd of the earnings towards personal expenses of the deceased, arrived at Rs.28,000/-

(Rs.42,000/- x 1/3). Then, the total loss of dependency comes to Rs.4,48,000/- (Rs.28,000/- x 16).

8. The Tribunal, in addition to the above, granted Rs.15,000/- towards loss of estate and Rs.5,000/- towards transportation and funeral expenses. Besides that, the Tribunal granted Rs.10,000/- to the 1st respondent/claimant towards loss of consortium. In all, the Tribunal granted Rs.4,78,000/- towards compensation to the respondents/claimants with interest @ 7.5% per annum.

9. Admittedly, in pursuance of the recent decisions of the Hon'ble Supreme Court, the compensation under conventional heads deserves to be enhanced. However, since it is an RTC appeal and the claimants have not preferred any appeal, the same could not be enhanced.

10. On considering the totality of the evidence on record, this Court found that there is no irregularity or illegality in granting the compensation of Rs.4,78,000/- to the respondents/claimants under various heads and in view of the recent judgment of the Hon'ble Supreme Court in *National Insurance Co. Ltd. Vs. Pranay Sethi and others*¹, this Court felt that the compensation granted by the Tribunal could not be said to be on higher side. Further, granting of interest at 7.5% per annum could not be found fault with.

¹ 2017(6) ALD 170 (SC)

11. The appeal is accordingly dismissed. No order as to costs.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

JUSTICE M.GANGA RAO

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