

HON'BLE Ms. JUSTICE J.UMA DEVI

M.A.C.M.A. No.1232 OF 2010

JUDGMENT:

1. Having been aggrieved by the order dated 01.02.2008 passed in M.V.O.P. No.409 of 2007 by the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-II Additional District Judge, Guntur (for short, 'the Tribunal'), the present Appeal is filed by the A.P.S.R.TC., which has been arrayed as respondent in the aforementioned O.P.

2. Appellant herein is the respondent in O.P. No.409 of 2007; 1st respondent herein is the wife, 2nd respondent herein is the minor son, 3rd and 4th respondents herein are the parents of Gorantla Venkata Subbaiah (hereinafter referred to as, 'the deceased').

3. For the sake of convenience, the parties hereinafter will be referred as they are arrayed before the Tribunal.

4. The case of the petitioners, in brief, is that they are the legal representatives of deceased Gorantla Venkata Subbaiah, who died in the motor accident, occurred on 12.03.2007. They asserted that on 12.03.2007 at about 03:30 P.M. while the deceased was proceeding on a motorcycle bearing No.AP 07AG 0659 from Chilakaluripet to Komatinenivaripalem, the motorcycle driven by him was hit by an A.P.S.R.TC. bus bearing No.AP 10Z 5224 (for short, 'the crime vehicle'), when reached near Lingamguntla village, due to the rash and negligent driving of it by its driver. In the said accident, the deceased Gorantla Venkata Subbaiah received fatal injuries and died on the spot. On intimation, Police of Chilakaluripet P.S. registered a case in Crime No.19 of 2007 under Section 304-A I.P.C. against the driver of the crime vehicle and laid charge sheet against him. It was also asserted by them in their

pleadings that as on the date of accident, the deceased was aged about 25 years working as Work Inspector under a Contractor and earning Rs.5,000/- p.m. towards his gross salary. Due to his sudden demise, the petitioners were subjected to untold agony and lost the sole breadwinner of their family. Therefore, they laid the claim against the A.P.S.R.TC. for compensation of Rs.3,00,000/-.

5. Respondent-A.P.S.R.TC., filed counter denying material allegations made in the Petition and the manner of the accident, age, occupation and earnings of the deceased and had put the petitioners to prove such allegations strictly by adducing evidence. It was contended by the respondent-APSRTC that the accident occurred due to contributory negligence of the deceased, who drove the motorcycle by carrying two pillion riders, and that the compensation claimed was excessive and exorbitant.

6. The petitioners, to prove their case, examined G.Siva Parvathi, the 1st petitioner, who was the wife of the deceased, as P.W.1, and examined the eye witness to the accident viz., Komirisetty Satyanarayana as P.W.2 and marked Exs.A-1 to A-6. On behalf of the respondent, Kadiyam Venkata Rao, the conductor of the crime bus, was examined as R.W.1 but no documents were marked.

7. The Tribunal, after considering the oral and documentary evidence available in the case record, came to the conclusion that the accident which resulted instantaneous death of deceased occurred due to the rash and negligent driving of the driver of the crime vehicle by its driver and, accordingly, made the respondent - A.P.S.R.T.C. liable to pay compensation of Rs.1,82,000/- to the claimants together with interest at

the rate of 7.5% p.a. from the date of petition till realization to the petitioners in respect of the death of the deceased.

8. Feeling aggrieved by the quantum of compensation awarded, the appellant-A.P.S.R.T.C. preferred this Appeal urging the following grounds:

- i. The deceased himself was responsible for the occurrence of the accident and that the Tribunal failed to appreciate the evidence of R.W.1, the Conductor of the crime vehicle, who deposed that three persons including the deceased were travelling on the motorcycle in violation of the Andhra Pradesh Motor Vehicle Rules and that he could not able to control the motorcycle which was overloaded.
- ii. As no evidence of any sort was produced in proof of any earning of the deceased the trial court ought to have disallowed the application filed for compensation.
- iii. Since the deceased himself was negligent in driving the motorcycle the Tribunal ought to have dismissed the claim petition as against APSRTC.
- iv. As the owner and insurer of the motorcycle are not made as parties to the claim petition, the trial Judge ought to have dismissed the claim petition on the ground of non-joinder of proper and necessary parties.

9. In the light of the above mentioned contentions raised by the appellant, the questions which need to be answered are:

- i. Whether the award impugned is sustainable in law?
- ii. Whether the trial court is justified in passing the award in favour of the petitioners granting compensation of Rs.1,82,000/- to them and

directing APSRTC to pay such amount together with interest at 7.5% p.a. and costs thereon?

10. Registration of the case in Crime No.19 of 2007 for the offence under Section 304-A I.P.C. as against the driver of the crime vehicle bearing No.AP-10Z-5224 was not denied by the appellant-APSRCT. The petitioners having asserted that the deceased Gorantla Venkata Subbaiah died in the accident caused by the driver of crime vehicle bearing No.AP-10Z-5224, examined G.S.Parvathi, wife of the deceased, as P.W.1 and one K.Satyanarayana, the eye witness to the said accident, as P.W.2, apart from marking Exs.A-1 to A-6. Relying on the evidence of P.W.2, who was the eye witness to the accident, and Exs.A-1 and A-2, which would succinctly establish that due to the negligent driving of the RTC bus bearing No.AP-10Z-5224, by its driver, the motorcycle on which the deceased was proceeding was hit and that he received fatal injuries in the said accident and died due to such injuries. As such finding was based on the oral evidence of PW 2 who witnessed the accident, and the evidence so given was fully corroborated by Exs.A1 & A2, the same cannot be faulted. Merely because of a statement made by RW 1 in his evidence that three persons travelled on motorcycle, negligence on the part of rider of the motorcycle cannot be inferred. In Ex.A1 it is nowhere stated that the deceased was negligent, and due to his inability to control the motorcycle, it was hit to RTC bus. The bus driver, who according to the appellant is innocent and is no way concerned with the accident had not been examined. Placing reliance on the evidence of PW 2 whose evidence appears to be trustworthy, the trial court has rightly held that due to the negligent driving of the RTC bus bearing No.AP-10Z-5224 by its driver, the said bus was hit to motorcycle and due to said impact he fell down and received fatal injuries and died on the spot on account of the said injuries.

11. The petitioners have not adduced any evidence to prove the exact age of the deceased. However, relying on Ex.A-3 – inquest report and Ex.A-5 post-mortem report, wherein the age of the deceased is mentioned as 25 years, the Tribunal has applied the multiplicand '18'.

12. Coming to the other contention of the appellant-A.P.S.R.T.C., that as the petitioners have not adduced any evidence to prove the income of the deceased, their claim made for compensation may have been dismissed, is concerned, it appears from the material on record that the Tribunal assessed the income of the deceased notionally at Rs.15,000/- p.a. (as per II Schedule of the Motor Vehicles Act) due to non-production of evidence by the claimants, in proof of his income. On duly deducting 1/3rd of such income towards his personal expenditure, it has awarded Rs.1,80,000/- under the head of loss of income contribution of the deceased to his family and an amount of Rs.2,000/- towards funeral expenses. Thus, a total sum of Rs.1,82,000/- is awarded by the Tribunal towards compensation to the petitioners. It appears from the award impugned that no compensation amount is awarded under the head of loss of consortium, though the 1st petitioner lost her husband at her young age. Similarly, no compensation is awarded under the head of loss of estate and love and affection. The petitioners in my view are entitled to get more compensation amount than the amount awarded by the court below, if considerable amount of compensation is awarded under the heads also.

13. In view of the above, it can be said without any hesitation that there is no merit in the contention of the appellant-A.P.S.R.T.C. that the amount awarded to the claimants towards compensation is excessive.

14. In the light of the aforementioned discussion, the Appeal filed by the A.P.S.R.T.C. fails and the same hereby dismissed accordingly,

confirming the award dated 01.02.2008 passed in M.V.O.P. No.409 of 2007 on the file of the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-II Additional District Judge, Guntur.

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

J.UMA DEVI, J

Date: 30.07.2018.
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HON'BLE Ms. JUSTICE J.UMA DEVI

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