

HON'BLE Ms. JUSTICE J.UMA DEVI

M.A.C.M.A.No. 2077 of 2010

ORDER:

Aggrieved by the Award dated 24.04.2009 passed in OP No.402 of 2007 on the file of the Motor Accidents claims Tribunal-cum-III Additional District Judge, Tirupati, the present appeal is filed by APSRTC, represented by its Managing Director.

Respondents herein are the claimants in the above OP.

For the sake of convenience, the parties will hereinafter be referred to as they are arrayed in the OP.

The factual background of the case is briefly stated as follows:

The petitioners are parents of the deceased-B.Hemadri, who died in the motor vehicle accident dated 22.02.2007. Their case as set out in their pleadings is that on 22.02.2007, the deceased was proceeding towards Tiruchanur on a motorcycle bearing No.AP 03S 3586 along with his friends Muniraja and Venkata Muni from Tirupati to attend a marriage, when they were about to negotiate the road to reach Padmavathi Kalyana Mandapam at

Tiruchanur, an RTC Bus bearing No.AP 11 Z 1732, which belonged to the respondent-corporation, hit their motorcycle due to the negligent driving of it by its driver and as a result of it, the deceased fell down and sustained bleedings injuries. Immediately after the accident, the deceased was taken to SVRRGG Hospital, Tirupathi, and where he succumbed to injuries while undergoing treatment. Another person by name Muniraja, who accompanied the deceased to Tiruchanur died on the spot. A case in Crime No.28 of 2007 was registered against the driver of the aforesaid RTC bus as he was responsible for the death of the deceased and his friend Muniraja. It is further averred in their pleadings that by the date of the accident, the deceased was 24 years old and was getting monthly income of Rs.3,000/- as a hawker at Tirumala. Had he been alive, being son, he would have rendered his support to the petitioners in their old age. Due to the sudden demise of the deceased, the petitioners not only lost his love and affection but also the bread winner of their family. Therefore, they filed the claim petition for compensation of Rs.4,00,000/- as against APSRTC in which institution the driver who caused the accident was employee.

The management of APSRTC filed an elaborate counter denying all the material allegations made against it including the manner of the accident, age and income of the deceased. It was contended by APSRTC that on seeing the motor cycle coming in zig-jag manner, the driver of the RTC Bus applied breaks and stopped the bus on the extreme left side of the road, but the rider of the motorcycle who lost control over the motorcycle and dashed the motor cycle to the right side bumper of the bus, which was stopped and as the result of it, the rider and the pillion riders (deceased herein) of the motorcycle sustained bleeding injuries. The rider of the motor cycle alone was responsible for the alleged accident and the driver of the RTC bus was not at fault. As the driver of the RTC bus was not responsible for causing of the aforementioned accident, it could not be made liable to pay compensation.

Based on the above pleadings, the trial Court framed the following points for consideration.

1. *Whether the pleaded accident occurred resulting in the death of the deceased and if so, was it due to the fault of the driver of the APSRTC bus bearing No.AP 11 Z 1739 of respondent ?*

- 2. Whether the petitioners are the legal representatives of the deceased and entitled to compensation and if so to what amount and from which of the respondents ?*
- 3. Whether the OP is bad for non-joinder of necessary parties ?*
- 4. To what relief ?*

The petitioners in support of the contentions raised in their claim petition, examined the father of the deceased as P.W.1. K.Gangadhar, an eye witness to the accident, was examined as P.W.2 and documents Exs Exs.A1 to A10 were marked. On behalf of respondent-corporation, the driver of the RTC Bus was examined as RW-1 but no documents were marked.

The tribunal on appreciation of oral and documentary evidence available in the case record, more particularly the evidence of the eye witness-P.W.2 and RW-1, the driver of the offending bus, against whom a case was registered by the Police, came to the conclusion that due to negligent driving of the driver of RTC bus being driven by RW-1, hit the motor cycle on which the deceased was proceeding along with his friends. RW-1 was responsible for commission of the accident and accordingly allowed the claim of the

petitioners in part by awarding compensation of Rs.2,94,000/- and directed the respondent/APSRTC to pay such amount with interest at 7.5% p.a. from the date of petition till the date of deposit together with proportionate costs thereon. Challenging the said award of the trial Court, APSRTC filed this appeal.

Heard both sides.

It is contended by the learned counsel for the appellant-corporation that the court below ought to have held that the claim petition deserved to be dismissed due to non-joinder of necessary parties viz., owner and insurer of the motor cycle involved in the accident. The trial Judge being taken note of the fact that there was contributory negligence on the part of the rider of the motor cycle also who allowed two persons to travel on motor cycle is deviation of the rules laid down under the Motor Vehicle Act, and that there was no negligence on the part of the driver of the RTC bus. It is also contended by the standing counsel for APSRTC that no document is produced to establish the age and income of the deceased as Hawker at Tiruchanur. As the petitioners have not produced any documents establishing the income of the deceased, the assessment of compensation if any made by the court below can

be said to be done without any basis, as illegal. The Court below ought to have dismissed the claim of the petitioners as they failed to prove the age and permanent income of the deceased.

The learned counsel for the respondents/claimants submits that the claimants have not only lost love and affection of the deceased but also the bread winner of their family. The learned trial Judge assessed the income of the deceased rightly at Rs.3000/- per month as a hawker at Tirumala and passed an award Rs.2,94,000/-. The award under challenge is not suffering from patent illegality warranting interference of this Court.

Perused the evidence on record as well and the award impugned in this appeal.

Insofar as the legality and correctness of the license of the driver, the trial Judge on this issue and also relating to negligence is concerned, P.W.2 rickshaw puller who witnessed the accident deposed that while he was taking goods in his rickshaw the accident took place in his presence due to rash and negligent driving of RTC Bus (offending vehicle) by R.W.1. As per his version while he was coming towards Padmavathi Kalyana Mandapam, Tiruchanur, it was hit by the bus driven by R.W.1 in rash and negligent manner. Due to

the said incident, the deceased and other inmates of motor cycle fell down, and the said accident resulted instantaneous death of another person traveled on the motor cycle. It is due to the negligent driving of the bus by which the deceased received injuries and one of his friend died on the spot. Charge sheet is laid against R.W.1 and case registered against him is pending on the file of Additional Judicial Magistrate of First Class, Tirupathi. Exs.A1 to A4 clinchingly establish these facts. Departmental enquiry is also conducted against R.W.1, and this fact is admitted by him in his cross-examination. The tribunal upon consideration of the evidence of P.W.1 and R.W.1 and the documentary evidence available in the case record has held that the negligent driving of RTC bus bearing No.AP 11 Z 1732 resulting instantaneous death of Muniraja and receiving of injuries by the deceased due to the same he died in SVRRGG Hospital, Tirupathi, while undergoing treatment.

Having regard to the above facts and circumstances which are abundantly proved by adducing relevant evidence, this court is of the view that the tribunal has not committed any error in holding that due to the negligent driving of RTC bus bearing No.AP 11 Z

1732 by R.W.1, the accident dated 22.2.2007 which resulted total injuries to the deceased took place.

As regards the quantum of compensation is concerned, a contention is raised by the learned Standing Counsel appearing for APSRTC that the Tribunal ought to have deducted 50% of the income of the deceased towards his personal expenditure as he was bachelor. His further contention is that the compensation awarded under other heads such as loss of estate, funeral expenditure is also excessive and exorbitant.

In the affidavit filed in lieu of chief examination of P.W.1, this was averred that the deceased was 24 years old by the date of his death and he was earning Rs.3,000/- p.m. as hawker at Tirumala. The appellant-APSRTC has not adduced any evidence to disprove the evidence given by P.W.1 as to the income of the deceased as a hawker at Tirumala. The tribunal has placed reliance on the decision in *Harishchandra & Another v. Satendra Singh and others*¹ to take view as to the income of the deceased basing on the evidence of P.W.1 it has assessed the income of the deceased at Rs.3,000/- per month, and per annum at Rs.36,000/-. Since the

¹ 2007(1) An. W. R. 7 (M. P.)

deceased was a bachelor, the tribunal had taken the age of his mother into consideration for fixing the multiplier. As the mother of the deceased was aged about 45 years, the Tribunal has taken appropriate multiplier '14' as per schedule of MV Act. The Tribunal ought to have deducted 50% of the income towards his personal expenditure instead of 1/3 of his income as he was a bachelor.

Even it is assumed for a moment that 50% of the income of the deceased is to be deducted towards his personal expenditure, the annual loss of the contribution of the deceased to his family comes to Rs.18,000/-. If the annual loss of contribution of the income of the deceased and is multiplied by 14, the loss of income contribution of the deceased to his family comes to Rs.2,52,000/- ($18,000/- \times 14 = \text{Rs.}2,52,000/-$). Apart from awarding Rs.2,64,000/- the tribunal also granted Rs.20,000/- towards loss of estate and Rs.10,000/- towards funeral expenses and in total the compensation amount arrives at Rs.2,94,000/-. The petitioners also entitled for loss of estate in view of death of the deceased. If this aspect is considered, the compensation amount to be granted exceeds the amount already granted to the petitioners. Taking into consideration of the facts and circumstances of the case on hand, I

am of the view that the tribunal has awarded just and reasonable compensation amount of Rs.2,94,000/- to the petitioners under all heads. I find no merits in the contention of the appellant that the amount awarded is excessive.

Having considered all the above aspects, this court has no hesitation to hold that the award passed by the tribunal is just and reasonable and does not warrant any interference of this Court.

For aforementioned reasons, the appeal fails and the same is accordingly, dismissed. No costs.

Miscellaneous petitions if any, pending in the above appeal shall stand closed.



J.UMA DEVI, J

Dated:18.09.2018
Mjl/*