

WHON'BLE Ms. JUSTICE J.UMA DEVI

M.A.C.M.A.No. 442 of 2010

ORDER:

APSRTC preferred the present appeal challenging the Award dated 15.12.2009 passed in OP No.632 of 2007 on the file of the Motor Accidents Claims Tribunal-cum-District Judge, Karimnagar, wherein the Tribunal awarded an amount of Rs.8,09,274/- to respondent Nos.1 to 6 as compensation in respect of death of the deceased-Boppa Nalkam Srinivas in the accident occurred on 04.07.2007 at 9.30 a.m. near the bus stage of Ibrahimnagar of Medak District.

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

Petitioner No.1 is wife, Petitioner Nos.2 and 3 are parents, petitioner No.4 is brother, petitioner No.5 is minor daughter and petitioner No.6 is sister of deceased Boppa @ Nalkam Srinivas.

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

That on 04.07.2007 at 9.30 a.m. while the deceased Boppa @ Nalkam Srinivas crossing the main road, while proceeding towards

his house on a motor cycle bearing No. AP 15D 151 an RTC Bus bearing No.AP 11Z3002 which was proceeding towards Hyderabad from Karimngar, dashed his motor cycle and as a result of it, he received multiple grievous injuries. Immediately after the accident, he was shifted to Government Area Hospital, Siddipet from there, he was shifted to Yashoda Hospital, Hyderabad, and there he was treated as in patient from 04.07.2007 to 13.07.2007. Later he was shifted to NIMS Hospital for further treatment on 13.07.2007. While undergoing treatment in NIMS, he died due to the injuries received in the accident. A case was registered against RW-1, the driver of the offending vehicle in Crime No.84 of 2007 for the offence under Section 338 IPC of P.S. Chinnakodur, Medak District. It was further asserted by the claimants that the deceased was aged about 30 years by the dte of his death and he was hale and healthy prior to the accident. He owned a tractor bearing No. AP 23 G 6004 and agricultural land of Ac.15.00 which were being cultivated with well water and that he was getting monthly income of Rs.10,000/- through cultivation and by giving his tractor on rental basis. Due to the sudden demise of the deceased, the petitioners lost his support and loss and affection. Hence, they

laid the claim before the court below as against the appellants for compensation of Rs.10,00,000/-.

The Depot Manager of APSRTC, Karimnagar Depot, remained ex-parte.

In the counter filed by the driver of the offending vehicle negligence on his part was denied and as per his version, the deceased himself drove the motor cycle in a rash and negligent manner and dashed the motor cycle to the RTC Bus. But in support of his aforementioned pleadings, he did not choose to examine himself as a witness and that no steps whatsoever have been taken by him to examine the bus Conductor or any other person who was travelling in the bus as a witness.

In the counter filed by Managing Director, APSRTC (R3), Hyderabad, a specific plea of defence was taken that the deceased himself drove his motor cycle in a rash and negligent manner and dashed the motor cycle to the right side bumper of the bus and fell down from the motor cycle and died. The income and avocation of the deceased were also denied and it was contended that claim of the petitioners deserves to be dismissed due to non-joinder of the owner and insurer of the motor cycle which involved in the accident.

Based on the above pleadings, the tribunal framed the following points for consideration:

1. Whether pleaded accident occurred resulting in the death of deceased and if so, was it due to fault of driver of APSRTC bus bearing No. AP 11Z 3002 or driver (deceased) of motor cycle bearing No. AP 15D 151 ?
2. Whether the petition is bad for non-joinder of necessary parties ?
3. Whether the petitioners are legal representatives of the deceased and entitled to compensate and if so, what amount and from which of the respondents ?
4. To what relief ?

The petitioners, to prove their case examined four witnesses ad marked Exs.A1 to A12. P.W.1 was the father of the deceased, P.W.2 was the eye-witness to the incident. P.W.3 was the Doctor, who treated the deceased. P.W.4 was the person, who possessed lands adjacent to the lands of the deceased. On behalf of respondents, no oral or documentary evidence was adduced.

The Tribunal on appreciation of oral and documentary evidence available in the case record, held that the accident occurred due to rash and negligent driving of the RTC bus bearing No.AP 11 Z 3002 by respondent No.1 and decided all the points in favour of the petitioners and awarded compensation of Rs.8,09,274/- and made the management of APSRTC to pay the compensation amount

together with interest at the rate of 7.5% per annum and the costs thereon. Feeling aggrieved of the same, the management-APSRTC, preferred the present appeal.

Heard both sides.

The learned Standing Counsel appearing for respondents-appellants corporation contends that the Tribunal erred in holding that the accident occurred due to rash and negligent driving of RTC Bus bearing No.AP11Z 3002 by its driver, and it is his contention that the deceased himself drove the motor cycle in a rash and negligent manner and dashed the motor cycle to the bus. According to him, the amount awarded to the claimants is highly excessive and that the claim made by the claimants though deserves to be disallowed due to their failure to adduce evidence in proof of the age and income of the deceased, it has been allowed partly. The multiplier 17 applied by the tribunal has got no basis and even the income assessed by it has got no basis. He states that as the Award impugned is contrary to the evidence on record, seeking indulgence of this Court, present appeal is preferred.

I have gone through the entire material on record and the order under challenge.

In view of the above rival contentions, it is to be examined that whether the deceased succumbed to the injuries received in the accident dated 04.07.2007 and whether the said accident occurred due to the negligent driving of the RTC bus bearing No.AP 11Z 3002.

It is as per P.W.2, while deceased was crossing the road, he was hit by the RTC bus bearing No.AP 11Z 3002, which was driven by its driver in a rash and negligent manner and due to the said impact, he fell down and received injuries. Immediately after the accident, he telephoned to 108-Ambulance and before its arrival, he took him to Government Area Hospital, Siddipet in an auto. Refuting the above mentioned evidence of P.W.2, no oral or documentary evidence was adduced by APSRTC. The above evidence given by P.W.2 remained uncontraverted. Regarding to the aforementioned accident, case was registered against RW-1. The evidence of P.W.3-Doctor and Exs.A3 and A4 would reveal that the deceased sustained severe head injury, a blunt injury to chest and to both bones of left leg.

Respondent No.1 though filed the counter denying negligence on his part and made the allegation that the deceased himself

contributed for the occurrence of the accident, he did not choose to enter into the witness box or that he took steps to examine any other witness such as, the bus Conductor or any one of the passengers of the bus to prove the negligence attributed to the deceased.

The Managing Director of APSRTC, though took the plea in his counter disputing the involvement of RTC Bus bearing No.AP 11Z 3002, did not choose to adduce any evidence before the tribunal to disprove the testimony of P.W.2, who deposed in clear terms that due to the negligent driving of the RTC bus bearing No.AP 11Z 3002 by its driver, it hit the motor cycle on the deceased proceeding on the road.

In the absence of any evidence coming from the side of APSRTC, explaining negligence on the part of the deceased nor the contention which it raised attributing negligence to the deceased was rightly not believed by the court below and it was rightly held that the driver of RTC Bus bearing No.AP 11Z 3002 was responsible for causing of fatal injuries to the deceased and due to such injuries he died subsequently.

As regards the quantum of compensation, which according to APSRTC is excessive concerned, there is no dispute that the deceased was shifted to Area Hospital, Siddipet for treatment in an auto by P.W.2, who witnessed his involvement in the accident. As per P.W.3, the deceased received head injury and a blunt injury over his chest and to both bones of left leg. As per Ex.A3-Post-mortem report, the deceased died due to poly trauma, hemorrhage and shock caused due to injuries sustained by him in the accident. Ex.A4 inquest report also would reveal that the deceased received fatal injuries to head, legs and on abdomen.

In the chief examination of P.W.1, it was deposed that soon after the accident, his deceased son was shifted to Area Hospital, Siddipet and from there to Yashoda Hospital, Hyderabad and there he was treated as in patient from 04.07.2007 to 13.07.2007 and from there he was taken to NIMS, Hyderabad for better treatment and that while undergoing treatment, he succumbed to injuries on 13.07.2007.

Exs.A9 and A11 are the medical bills produced by the petitioners in proof of the expenditure incurred by them towards treatment of the deceased and the medicines purchased. Exs.A8

and A10 are the discharge summary cards. The evidence given by P.W.3-Doctor in so far as the treatment provided to the deceased in Yashoda Hospital by the claimants and the amount incurred by them towards treatment is clear and categorically established as to incurring of expenditure of Rs.2,40,774/- by them towards his treatment. As the petitioners could able to prove that from the date of the accident till his death, he was under treatment, there cannot be hesitation for this court to hold that there exists nexus between the accident and the death of the deceased.

As per the petitioners while the deceased was alive, he was attending to agricultural work and was earning income of Rs.4,000/- p.m. They examined P.W.4, who was the neighbouring land owner of the deceased to prove their above mentioned assertions apart from examining P.W.1, the father of the deceased. P.W.4 deposed that the deceased was cultivating his land of Ac.15.00 guntas. The income which he was getting through cultivation though was not his exclusive income, taking into consideration of the evidence of P.W.4 through which the petitioners could prove the factum of cultivation of the land by the deceased, the tribunal assessed his income at Rs.4000/- per month and the annual income at Rs.48,000/- per

annum on duly deducting $\frac{1}{3}^{\text{rd}}$ of such income of the deceased towards his personal and living expenditure, the loss of income contribution of the deceased to his family was arrived at Rs.32,000/- per annum. Multiplying the said annual loss of his income contribution to his family with multiplier of '17' (as the deceased was 30 years at the time of accident), the tribunal awarded the amount of Rs.44,000/- towards loss of income contribution of the deceased to his family. The tribunal granted Rs.10,000/- towards consortium to petitioner No.1, who was wife of the deceased. Rs.5,000/- towards loss of love and affection to his minor daughter and Rs.2,500/- each to the petitioners 1 and 2 who were his parents and Rs.2,000/- towards funeral expenditure and Rs.2,500/- towards loss of estate and thus in total, the tribunal awarded Rs.8,09,274/- to the petitioners as compensation.

As the compensation amount of Rs.8,09,274/- awarded to the claimants by the tribunal appears to be reasonable and fair, there cannot be any hesitation to this Court to dismiss the appeal filed by APSRTC.

As the award passed by the court below granting compensation of Rs.8,09,274/- to the claimants does not appear to be factually and legally incorrect, the same is hereby affirmed.

In the result, the appeal filed by APSRTC against the award in OP No.632 of 2007 on the file of the Motor Accidents Claims Tribunal-Cum-District Judge, Karimnagar is dismissed. No costs.

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

J.UMA DEVI, J

20th September, 2018
Mjl/*