

HON'BLE SRI JUSTICE T. AMARNATH GOUD

MA.CMA.NO: 185 OF 2014

J U D G M E N T :

This appeal arising out of the award and decree dated 03/07/2009 passed in O.P.No. 216 of 2008 by the V-Additional Metropolitan Sessions Judge [Mahila Court)-cum-XIX-Additional Chief Judge, City Criminal Courts, Hyderabad, [for short “ *The Tribunal*”).

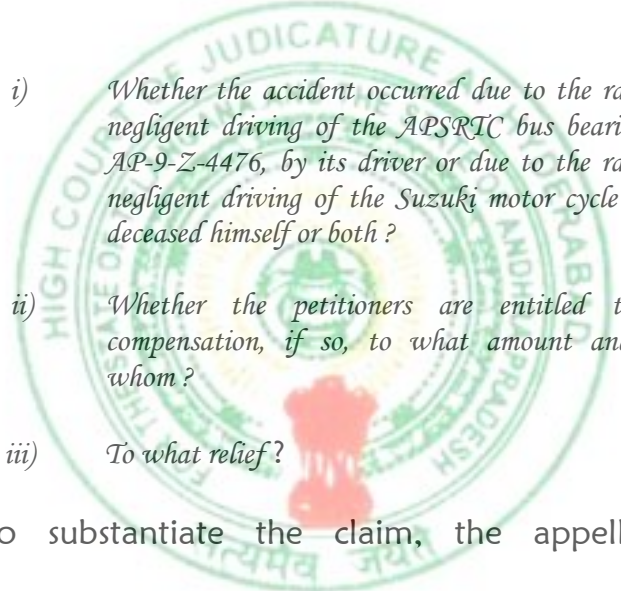
2. The appellant Nos. 1 and 2, who are mother and brother of the deceased, Mr.K. Srinivas @ Jaganath filed this appeal, having dis-satisfied with the quantum of compensation awarded by the Tribunal on account of the death of the deceased in the motor vehicle accident.

3. The brief facts of the case are that on 01/07/2007 at about 03:00 p.m., while the deceased, Srinivas along with another deceased person by name, N. Mahender was proceeding on a “*Suzuki Motor Cycle*” bearing No. *AP-28-L-2861* from Gandhi Nagar towards Ammuguda, an APSRTC bus bearing No. *AP-9-Z-4476* of Cantonment Depot, Secunderabad, came in opposite direction in a rash and negligent manner from opposite direction and dashed against the Yamaha motor cycle bearing No. *AP-28-L-2861* on which the deceased was a pillion rider and also another “Yamaha Motor Cycle” bearing No. AP-10-B-2149. Consequently, in the accident, Srinivas, Mahender and Kirthi Selan died on the spot and others received injuries. The motor cycle was completely damaged. The

appellants-claimants filed the claim-petition claiming compensation of Rs.6,00,000=00 against respondents 1 and 2, namely; the A.P.S.R.T.C.

4. Before the Tribunal, the respondents 1 and 2 have filed a common counter denying the averments of the claim-petition and averred that there was no negligence on the part of the driver of the APSRTC bus and prayed to dismiss the claim-petition.

5. On the basis of the pleadings, the Tribunal framed the following issues for trial:

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- i) *Whether the accident occurred due to the rash and negligent driving of the APSRTC bus bearing No. AP-9-Z-4476, by its driver or due to the rash and negligent driving of the Suzuki motor cycle by the deceased himself or both ?*
 - ii) *Whether the petitioners are entitled to any compensation, if so, to what amount and from whom ?*
 - iii) *To what relief?*

6. To substantiate the claim, the appellants-claimants examined PWs-1 and 2 and Exs.A-1 to A-6 were marked on their behalf. No oral and documentary evidence was let-in by the respondents-APSRTC.

7. On appreciation of oral and documentary evidence placed on record, the Tribunal has applied the multiplier '16', as the deceased was aged 20 years on the date of accident and the appropriate multiplier applicable to the age group between 15 to 20 years is 16. The Tribunal has fixed Rs.100/- per day as he was an unskilled labourer. The Tribunal determined Rs.3000/- as the

monthly income of the deceased and annual income works out to Rs.36,000/-. The appellants 1 and 2, who are mother and brother of the deceased lost Rs.36,000/- per annum on account of sudden accidental death. Out of which, 1/3rd was deducted towards his personal expenses and the balance amount comes to Rs.24,000/-. Hence, the multiplier relevant for the age of the mother of deceased as per the second schedule of the Motor Vehicles Act is 16 and determined the compensation, viz., **Rs.24.000/- x 16 = 3,84,000=00** and that apart Rs.6,000/- towards loss of estate and **Rs.6,000/-** towards funeral expenses. In all, the appellants-claimants were granted Rs.3,94,000/- towards compensation together with proportionate costs and subsequent interest @ 7% per annum from the date of filing of claim-petition till its realization, holding the respondents 1 and 2 jointly and severally liable to pay the compensation within one month. Out of total compensation of Rs.3,94,000/-, the Tribunal apportioned the compensation amount to the first appellant Rs.2,00,000/- and **Rs.1,94,000/-** to the appellant No. 2 and permitted the first appellant/claimant and second appellant to withdraw Rs.25,000/- each and the balance amount was ordered to be kept in Fixed Deposit Receipt in their names in any Nationalized Bank for a period of three years.

8. The claimants 1 and 2, having dis-satisfied with the quantum of compensation awarded by the Tribunal, preferred this appeal raising various grounds in the memorandum of appeal.

7. Heard Sri P. Ramakrishna Reddy, learned counsel for the appellants and Sri N. Vasudeva Reddy, learned Standing Counsel for the respondents-APSRTC.

8. Before the Tribunal, PW-2 N.Vikas, who was an eye-witness to the accident, was examined by the appellants-claimants to speak about the manner of accident. According to the evidence of PW-2, he deposed that on 01/7/2007, he was riding a Yamaha Motor cycle bearing No. AP-10-B-2149 and Mr.Kirthi Selan was the pillion rider and another Suzuki Motor Cycle bearing No. AP-28-L-2861, his brother Mahender was riding the Suzuki motor cycle and the deceased, Srinivas was the pillion rider from Gandhi Nagar towards Ammuguda and when they reached near Railway Flyover bridge, Cavalry Barracks, Bolarum, one APSRTC bus bearing No.AP-9Z-4476 came in a rash and negligent manner in the opposite direction and dashed against the Suzuki Motor Cycle and Yamaha Motor Cycle and consequently, all of them fell down from the motor cycles; Kirthi Selan, Mahender and Srinivas died on the spot. In the cross-examination, PW-2 denied that the motor cycles collided and they fell down from the motor cycles and he further denied that the accident was due to his negligence and the negligence of Mahender. He further denied that the APSRTC bus driver was not at fault. Except bald suggestions, nothing was elicited from the mouth of PW-2 to discredit his testimony. The evidence of PW-2 goes to show that the accident was due to the rash and negligent driving of the

APSRTC bus driver. Exs.A-1 and A-2 are the certified copies of FIR and charge sheet goes to show that the accident occurred due to the rash and negligent driving of the driver of APSRTC. Ex.A-6 certified copy of the Motor Vehicle Inspector's report which discloses that the accident occurred not due to any mechanical defects of the bus. The respondents did not adduce any rebuttal evidence for the evidence adduced by the appellants-claimants. The Tribunal, therefore, observed that the evidence of PW-2 proves that the accident occurred due to the rash and negligent driving of the bus driver, therefore, the Tribunal has rightly held that the deceased died due to the rash and negligent driving of APSRTC bus bearing No. AP-9Z-4476 of Cantonment Depot. In the considered opinion of this Court, the award of the Tribunal is well-considered and needs no interference, except with regard to the issue of deducting 50% towards personal expenses in the light of the decision of the Hon'ble Apex Court in **MUNNA LAL JAIN V/s. VIPIN KUMAR SHARMA AND ORS.** ¹, and also the conventional charges for a sum of Rs.30,000=00 as decided by the Hon'ble Apex Court in **NATIONAL INSURANCE COMPANY LIMITED V/s. PRANAY SETHI** ², the other parts of the award needs no interference.

¹) 2015 [6] S.C.C. 347

²) 2017 [16] S.C.C. 680

9. With the above modification, this appeal is partly allowed. No costs.

10. As a sequel, miscellaneous applications if any, pending in this appeal shall stand closed.

JUSTICE T. AMARNATH GOUD



30-11-2018
I s L

HON'BLE SRI JUSTICE T. AMARNATH GOUD

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[R E S U L T :: APPEAL IS PARTLY ALLOWED]



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