

HON'BLE Ms. JUSTICE J.UMA DEVI

M.A.C.M.A. No.1182 OF 2010

JUDGMENT:

1. Having been aggrieved by the order dated 15.02.2010 passed in M.V.O.P. No.916 of 2007 by the Chairperson, Motor Vehicles Accidents Claims Tribunal-cum-V Additional District Judge at Vijayawada (for short, 'the Tribunal'), the present Appeal is filed by the A.P.S.R.TC., which has been arrayed as 2nd respondent in the aforementioned O.P.

2. Appellant herein is the 2nd respondent in O.P. No.916 of 2007; 1st respondent herein is the wife, 2nd and 3rd respondents herein are the sons, the 4th respondent herein is the mother of Duvvuri Naga Venkata Narasimha Murthy (for short, 'the deceased') and the 5th respondent herein is the driver of A.P.S.R.T.C. Bus bearing No.AP 11 Z 1416 (For short, 'the crime vehicle').

3. Before the Tribunal M.V.O.P. No.916 of 2007 is filed by respondents 1 to 4 herein claiming compensation for the death of D.N.V. Narasimha Murthy in the road accident occurred on 01.02.2007.

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

5. The case of the petitioners, in brief, is that they are the legal representatives of the deceased Duvvuri Naga Venkata Narasimha Murthy, who died in the motor accident, which occurred on 01.02.2007 at about 10-00 a.m. As per their assertion, on 01.02.2007 at about 10:00 A.M. while the deceased was proceeding from Vijayawada to Sundaram Finance, at Kanchikacherla, where he was working, in his Indica Car No.AP 16/AM 7348, when he reached near Ankith Enterprises, his Car was hit by the RTC bus bearing No.AP 11Z 1416 of Jaggaiahpet Depot,

due to the negligent driving of it by its driver. The said accident resulted in instantaneous death of Duvvuri Naga Venkata Narasimha Murthy and damage to his car. On intimation, Police of Kanchikacherla P.S. registered a case against the 1st respondent, driver of R.T.C. bus, in Crime No.25 of 2007 under Section 304-A I.P.C. It was also asserted by them in their pleadings that as on the date of accident, the deceased was 40 years old, and was working as Junior Executive Officer in Sundaram Finance and was getting Rs.22,600/- p.m. as his gross salary. Due to his sudden demise, the petitioners were subjected to untold agony, and they lost sole breadwinner of their family. Therefore, they laid the claim for compensation of Rs.26,00,000/- as against the management of A.P.S.R.T.C., under whose administrative control the driver, who caused the accident, was working at the relevant point of time.

6. Denying the material allegations made in the petition as to the manner of accident, age, occupation and earnings of the deceased, an elaborate counter was filed by A.P.S.R.T.C. It was contended by A.P.S.R.T.C that the accident occurred due to contributory negligence of the deceased. The Tribunal instead of holding that the deceased himself was negligent, held that driver of A.P.S.R.T.C. bus alone responsible for occurrence of the accident.

7. The petitioners, to prove their case, examined Duvvuri Lakshmi Bhaskaram, the wife of the deceased, as P.W.1 and examined the colleague of the deceased viz., T.Geetha Chari as P.W.2 and marked Exs.A-1 to A-12 and Ex.X-1. On behalf of the respondents, Ch.Bhaskara Rao, the driver of the crime vehicle, was examined as R.W.1 but no documents were marked.

8. The Tribunal, upon consideration of 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 negligent driving of the crime vehicle by its driver and, accordingly, made the management of A.P.S.R.T.C. liable to pay compensation of Rs.11,41,072/- to the petitioners in respect of the death of the deceased. Feeling aggrieved by the quantum of compensation awarded by the Tribunal below, A.P.S.R.T.C. filed this Appeal.

9. It was contended by the learned Standing Counsel for the appellant-2nd respondent that the petitioners failed to establish the negligence on the part of the driver of crime vehicle, which involved in the accident. According to him, the Tribunal erred in passing of the award in favour of the claimants granting compensation of Rs.11,41,072/- and in making the management of A.P.S.R.T.C. liable to pay such amount. His contention was that the Tribunal failed to notice that the deceased himself drove the Car in a rash and negligent manner and due to the negligent driving of the Car by him, his car was hit to R.T.C. bus. As the owner and insurer of the Car bearing No.AP 16/AM 7348 were not showed as parties to the Claim Petition, the Tribunal ought to have dismissed Claim Petition on the ground of non-joinder of proper and necessary parties. It also contended that the amount awarded towards compensation is excessive and exorbitant.

10. I have perused the order impugned in the present appeal and also the evidence available in the case record.

11. Registration of the case in Crime No.25 of 2007 for the offence under Section 304-A I.P.C. against the 1st respondent/driver of the crime vehicle was not denied by the appellant. Based on the evidence collected

by the Police during the course of investigation, charge sheet was filed against the 1st respondent/driver, and the concerned Criminal Court had taken cognizance of the case against him and numbered it as C.C. No.106 of 2008. The Tribunal on examining the contents of F.I.R, where negligence was attributed to the 1st respondent/driver of crime vehicle and the other supporting material such as report of the M.V.I., post mortem report of the deceased, and the rough sketch of the scene of offence, came to the opinion that the death of the deceased occurred due to the rash and negligent driving of the A.P.S.R.TC. bus bearing No.AP 11Z 1416 by its driver. The 1st respondent/driver of the R.T.C. bus, though was arrayed as party to the Claim Petition, he did not choose to contest the O.P. and remained *ex-parte*.

12. The 1st respondent/driver was examined as R.W.1 before the Tribunal, during which time he did not deny the registration of the crime against him. The Tribunal relying on the Exs.A-1 to A-4, where negligence was attributed to the driver of crime vehicle, held that the accident, which resulted instantaneous death of the deceased, occurred due to the negligent driving of the R.T.C. bus bearing No.AP 11Z 1416 by the 1st respondent/driver. Though the learned Standing Counsel for the appellant-2nd respondent strenuously argued that the deceased drove the Car in a rash and negligent manner and hit the car to R.TC. bus bearing No.AP 11Z 1416, no evidence was placed on record by A.P.S.R.T.C. to establish that the deceased himself contributed for the occurrence of the accident. Moreover, plea of contributory negligence on the part of the deceased was raised for the first time in the appeal grounds and in proof it, no evidence was adduced. The Tribunal on appreciation of the evidence on record including Exs.A-1 to A-4 meticulously held that the 1st respondent – driver of the crime vehicle was responsible for occurrence of the accident.

13. Coming to the aspect of quantum of compensation is concerned, wife of the deceased was examined as P.W.1 and the colleague of the deceased was examined as P.W.2, to prove the earnings of the deceased, Ex.A-9 pay slip of the deceased was marked through P.W.2. The petitioners also produced Form-16 statement of the deceased and marked it as Ex.A-12. The Tribunal taking into consideration of the net salary of the deceased, on duly deducting $\frac{1}{3}^{\text{rd}}$ of his net salary towards his personal expenditure, assessed the loss of income contribution of the deceased to his family at Rs.6,554/- p.m. and per year at Rs.78,648/-. By multiplying his annual loss of income contribution to his family with the relevant multiplier '14' (which is relevant multiplier for the people in the age group of 40 – 45 years), assessed the loss of income contribution of the deceased to his family at Rs.11,01,072/-. In addition to the amount so assessed, the Tribunal awarded Rs.15,000/- towards loss of consortium, Rs.15,000/- towards loss of estate, Rs.5,000/- towards transportation charges, and Rs.5,000/- towards funeral expenditure. Thus, in total a sum of Rs.11,41,072/- was awarded by the Tribunal towards compensation.

14. The appellant-2nd respondent did not choose to produce a scrap of paper to disprove the evidence given by P.W.2 regarding the earnings of the deceased, with reference to Ex.A-9 payslip. As a well reasoned award is passed, granting compensation of Rs.11,41,072/- taking into consideration of the evidence on record, it can be said without any hesitation that there is no merit in the appeal filed by the appellant – A.P.S.R.TC.

15. In the light of my aforementioned discussion, the appeal filed by A.P.S.R.T.C. fails and the same is hereby dismissed confirming the award dated 15.02.2010 passed in M.V.O.P. No.916 of 2007 on the file of V Additional District Court, Vijayawada.

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

J.UMA DEVI, J

Date: 30.07.2018.
Dsh



HON'BLE Ms. JUSTICE J.UMA DEVI

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