

THE HON'BLE SRI JUSTICE N.BALAYOGI

M.A.C.M.A.No.4/2009

JUDGEMENT :

The appellant/respondent, aggrieved by the award and decree dated 23.07.2008 in M.V.O.P.No. 53 of 2008, passed by the learned Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge, Tirupati, preferred this appeal, mainly contending that the Tribunal erred in holding against the appellant/corporation, even though there is no negligence on the part of the bus driver and on the other hand, the accident was occurred due to negligence of the passenger, who tried to get down the bus while moving. The Tribunal ought to have taken notional income of Rs.15,000/- instead of Rs.28,440/- per annum and awarding compensation of Rs.3,63,320/-. It is further contended that in view of the contributory negligence on the part of the passenger, hence, fixing liability on the appellant alone is illegal and arbitrary.

2. The respondent in M.V.O.P.No.53/2008 who is the appellant/respondent herein filed a counter affidavit contending that on 05.08.2002, the deceased boarded the bus at Leela Mahal bus stop, when the bus was proceeding from Tirupati to Mangalam. The deceased stood at the entrance of the door and when the said bus is reached near Mangalam bus stop, the deceased given instructions to stop the bus and when the driver of the bus was ready to stop the bus, the deceased himself with hurry manner jumped from the bus and fell down and sustained injuries. Thus, there is no negligence

on the part of the driver of the bus. Thus, there is contributory negligence on the part of the deceased only and the appellant /respondent's driver was not negligent.

The averments in the petition, in brief, are as follows:

3. On 05.08.2002 at about 5.30 P.M., while deceased was travelling in A.P.S.R.T.C. bus bearing No. AP.-10-Z-34, when it reached at Mangalam X Roads, due to negligence driving of the driver the deceased fell down from the bus and fell under the rear wheels and sustained grievous injuries. He was admitted in SVRRGG Hospital, Tirupati and succumbed to injuries.

4. The deceased was 35 years old and earning Rs.200/- per day as a Mason. The first petitioner is the wife, 2nd petitioner is son, 3rd petitioner is a minor daughter and 4th petitioner is widowed mother of the deceased. They are all legal-heirs and dependents of the deceased.

5. Heard the learned counsel for the appellant/ respondent and learned counsel for the respondents/claimants.

6. The Tribunal having considered the pleadings of both parties, settled the following issues for trial :

- 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 A.P.S.R.T.C. bus bearing No. AP 10 Z 34 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) To what relief ?

7. In this petition, P.W.s 1 and 2 and R.W.1 are examined and Exs.A.1 to Exs.A.6 are marked as a documentary evidence.

8. The learned counsel for the appellant / respondent contended that the Tribunal erred in finding that the driver of the A.P.S.R.T.C is alone negligent and there is no negligence on the part of the deceased. More so, the respondents/claimants contended that the accident is occurred due to rash and negligent driving of the A.P.S R.T.C. bus bearing No.AP 10 Z 34.

9. In order to prove the negligence of the driver of the offending bus, P.W. 1 and 2 are examined. P.W.1 is none other than the first claimant. P.W.1 is not an eye-witness to the accident. Sri A.Amavasya (P.W.2) claims to be an eye witness to the accident. P.W. 2 is the brother of PW.1. Ex.A.1-F.I.R. does not show that P.W.2 was present at the time of accident and he has seen the accident. P.W.2 has also not cited as prosecution witness in Ex.A.6-certified copy of charge sheet. In Ex.A.2- Inquest Report, P.W. 2 is mentioned as one of the relatives and present at the time of inquest. It also does not show that P.W. 2 is an eye-witness. It is thus; clear that P.W.2 is not an eye-witness to the accident. Thus, there is no oral evidence on behalf of the claimants to prove the negligence of the driver of the appellant/respondent Corporation.

10. Ex.A.1-marked as a copy of the F.I.R., according to which P.W.1 clearly stated that on 05.08.2002 at about 6.30 P.M. one Armugam, R/o. of BTL colony, came and informed her that her husband fell down under the R.T.C. bus bearing No.AP-10-Z-34,

while returning to home at 5.30 P.M. The Inquest Report under Ex.A.2 opined that while Eshwaraiah returning from Tirupari in a R.T.C. bus bearing No.AP-10-Z-34 when the bus reached to Mangalam village, the deceased get down from foot board to make it convenient to the other passengers to get down the bus. After passengers getting down the bus, the deceased Eshwaraiah was ready to enter into the bus. Without observing the deceased, who ready to enter into the bus, the driver suddenly moved the bus in a negligent manner and Eshwaraiah slipped and fell down on the rear wheel of the bus. The investigating officer after thorough investigation filed charge sheet which is marked as Ex.A.6. The claimants also filed Ex.A.4-certified copy of Form-54, Ex.A.5 certified copy of rough sketch which goes to suggest that the Investigation Officer after thorough investigation filed a charge sheet against the driver of the R.T.C. bus bearing No.A.P-10-Z-34 finding that on 05.08.2002, when the bus is running between Tirupati and Mangalam, at about 5.30 P.M., when it reached near Mangalam quarters cross road with heavy crowded passengers, at that time, the deceased, who was travelling on the foot board of the same bus, fell on the road due to rash and negligent acts of the driver and conductor of the bus, the deceased Eswaraiah fell on the road and slipped under the back wheels of the same bus . As a result, the said Eswaraiah sustained bleeding injuries and immediately shifted to S.V.R.R. Hospital for treatment. While undergoing treatment, the injured Eswaraiah died in the hospital on the same day at 6.45 P.M.

11. To rebut the evidence of P.W.1 and documentary evidence of Ex.A.1 to Ex. A.6, the driver of the bus was examined as R.W.1. The R.W.1 deposed that when he was driving the R.T.C. bus bearing No.A.P.-10-Z-34 on 05.08.2002 at about 4.30 P.M. and when it reached Mangalam, the deceased got down the bus in a drunken state and fell under the left side rear wheel of the bus and this accident occurred only due to the negligent of the deceased himself.

12. As per the evidence of R.W.1, the deceased himself fell down under the rear wheels of the bus. It is also the fact that the bus was stopped at Mangalam bus stop, enabling the passengers to get down the bus. The evidence of P.W.1 and documentary evidence under Ex.A.6 charge sheet, Ex.A.4 Form No.54, and Ex.A.5- seen of offence clearly show that the conductor given signals to the driver to start the bus without observing that the deceased was entering into the bus. As a result, the bus moved suddenly and the deceased fell down under the rear wheels of the bus. Since the driver is driving the public bus with over load, he should be more careful in moving the bus. Without observing the traffic rules the driver suddenly moved the bus.

13. In view of the facts discussed above, and having considered the evidence of the P.W.1 and documentary evidence of Ex.A.2, Ex.A.4 and Ex.A.6 and different version of the R.W.1, I am of the considered view that the findings of the Tribunal that the accident in question arose on account of the negligence of RW.1 (driver of the respondent) is legal valid and supported by the evidence.

14. The evidence of PW.1 is that the claimant is wife and claimants 2 and 3 are the children and 4th claimant is widow mother of the deceased and they are all dependents of the deceased. The relationship of the deceased is not in dispute. Accordingly, I am of the considered view that the claimants are legal heirs and dependents of the deceased.

15. According to the claimants petition the age of the deceased was 35 years as on the date of the accident. They have not filed any age proof. In the absence of any such documentary evidence, it is necessary to rely upon the oral evidence of P.W.1, according to whom the deceased was 35 years. The evidence of P.W.1 is that her husband was working as Mason and earned Rs. 200/- per day. In Ex.A.1 and Ex.A.2 the occupation of the deceased is shown as Mason. There is no rebuttal evidence produced by the 2nd respondent against the evidence of P.W.1. Except the oral evidence of the P.W.1, there is no iota of evidence showing that the deceased was earning Rs.200/- per day as a Mason.

16. The Tribunal taking into consideration the minimum wages at Rs.2,370/- as per G.O.Ms.No.69, Labour, Employment, Training and Factories, (Lab.II), dated 29.11.2000, arrived at Rs.28,440/- (Rs.2,370 x 12) as annual income of the deceased. As per the *SARALA VERMA* case the apex court is of the view that where the deceased was married and the number of dependents of the deceased are 1 to 3. the deduction towards personal living expenses of the deceased should be 1/3, and 1/4 where number of

dependent family members are 4 to 6. In the present case number of dependent family members of the deceased are 4. Therefore, instead of deducting $\frac{1}{3}$ of the annual income towards the personal expenses of the deceased, as done by the Tribunal, $\frac{1}{4}$ of the annual income has to be deducted. The Tribunal also while calculating the loss of earning, applied multiplier wrongly as '17'. As per the authoritative decision of the Apex Court in *SARALA VERMA* case, the relevant and appropriate multiplier applicable for the age of 35 years is '16'. In view of the above, the calculation of loss of earning is liable to be modified and accordingly modified as mentioned below :

17. As discussed supra, there is no dispute with regard to the income took into consideration by the Tribunal based on the minimum wages as stipulated in G.O.Ms.No. 69, dated 29.11.2000 at Rs. 2,370/- per month or Rs.28,440/- per annum. Following the decision of the Apex Court, $\frac{1}{4}^{\text{th}}$ has to be deducted towards personal expenses depending on the family members of the deceased. Accordingly, if $\frac{1}{4}$ of the annual income is deducted, the loss of dependency works out to be Rs.21,330/-. The appropriate multiplier applicable to the age of the decease is '16' and if the same is applied, the loss of future earning capacity comes to Rs. 3,41,280/-

18. Besides that the Tribunal awarded Rs.15,000/- towards loss of consortium, Rs.10,000/- towards funeral expenses and Rs.20,000/- towards loss of estate. The above amounts are not disputed by the respondents by submitting any cross objections.

19. Thus, in total the respondents / claimants are entitled to receive the compensation as below.

Towards loss of future earning capacity	Rs.3,41,280/-
Towards loss of consortium	Rs. 15,000/-
Towards funeral expenses	Rs. 10,000/-
Towards funeral expenses	Rs. <u>20,000/-</u>
Total compensation	Rs. <u>3,86,280/-</u>

20. The petition is filed by A.P.S.R.T.C. and no cross appeal is filed by the claimants. In the circumstances, It is not possible to enhance the compensation in the appeal filed by the A.P.S.R.T.C. However, there is an error apparent in applying the multiplier and also deducting the amount towards personal expenses from the annual income of the deceased, in view of the same, an error apparent on the face of the record is corrected. Except to that extent, I find no reasons to interfere with the amount already awarded by the Tribunal.

21. With the above observation the appeal is dismissed with costs, modifying to the extent indicated herein above and confirming the award of the Tribunal in all other aspects.

22. The appellant is directed to deposit the compensation amount after deducting the amount, if any, already paid or deposited within the period of 30 days from the date of receipt of copy of this order.

23. On such deposit being made, the respondents are permitted to withdraw the same.

24. Advocate Fee is fixed at Rs.2,500/-

25. Miscellaneous Petitions pending, if any, shall stand closed.

JUSTICE N.BALAYOGI

05-01-2018

JR



