

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M. A. C. M. A. No. 1456 of 2009

JUDGMENT:

This appeal is arising out of the order dated 12.09.2007 in M.V.O.P.No.1251 of 2004 passed by the Chairman, Motor Vehicles Accidents Claims Tribunal, Guntur.

2. Brief facts of the case are that on 10.10.2004, at about 7:15 AM, the petitioner-claimant, her husband and others were traveling in APSRTC bus bearing No.AP-9Z-8735 to go to Guntur, and when the bus reached near Narakoduru, the driver of the bus drove it at a high speed in a rash and negligent manner, to overtake an Auto, thereby lost control over the bus and dashed a tipper bearing No.AP-7T-3468 coming in opposite direction. As a result, the petitioner sustained fracture of right shoulder, fracture of right leg and other injuries. She was admitted in Government General Hospital, Guntur. She has taken treatment in Peoples Trauma Hospital, Guntur, as inpatient from 10.10.2004 to 21.10.2004. However, in spite of treatment, the injuries sustained by her did not heal, and she suffered permanent disability.

The petitioner was a tailor by profession and was earning Rs.3,000/- per month prior to the accident. On account of the injuries and permanent disability, she has been unable to do tailoring work and also other works.

Alleging that the accident occurred due to the rash and negligent driving by the driver of the APSRTC bus, she

filed a claim petition against the APSRTC under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.1,50,000/- for the injuries and permanent disability suffered by her in the accident.

Respondent-APSRTC filed counter denying the averments made in the claim petition. The respondent has contended that the accident occurred due to the rash and negligent driving by the driver of the tipper and, therefore, the petitioner ought to have impleaded the tipper owner and insurer as parties to the claim petition. The respondent has also disputed the age, occupation and income of the petitioner and also contended that the alleged injuries sustained by the petitioner have healed completely and there is no permanent disability, and that the claim of the petitioner is highly excessive.

The Tribunal, on consideration of the evidence of witnesses PWs.1 to 3, and the documents Exs.A1 to A14, and Ex.X3, has held that the accident occurred due to the rash and negligent driving by the driver of RTC bus, and awarded compensation of Rs.1,25,000/- with interest 7% per annum and proportionate costs against respondent RTC.

Aggrieved by the award passed by the Tribunal, the respondent APSRTC preferred this appeal.

3. Heard the learned counsel for the appellant-APSRTC; and the learned counsel for the respondent-claimant.

4. The points arise for consideration in this appeal are as follows:

(i) Whether there is contributory negligence on the part of the driver of the Tipper involved in the accident?

(ii) Whether the quantum of compensation awarded by the Tribunal, taking into consideration, the income of the injured as Rs.2,000/- per month, is abnormal and excessive?

5. Point No.1

At the outset, this is an accident occurred due to the rash and negligent driving by the driver of the APSRTC bus. The appellant-APSRTC has not examined any witness to prove that there was no rash and negligence on the part of the driver of the bus, though the APSRTC raised a contention that there was contributory negligence on the part of both the RTC driver and the Tipper driver. The respondent-claimant has not even examined to prove that the driver of the APSRTC bus alone is negligent. It is obvious that neither the conductor of the bus, nor the passengers in the bus nor the passersby on the road, at the time of the accident were examined. The non-examination of any material witnesses on behalf of the appellant, having pleaded contributory negligence on the part of the driver of tipper is not a good ground for consideration. The Tribunal, placing reliance on the evidence of PW1, and documents Ex.A1-FIR, Ex.A2-charge sheet; and Ex.A3-wound certificate, has arrived at a conclusion that the accident occurred due to the rash and negligent driving by the driver of the APSRTC bus. Therefore, the evidence on behalf of the petitioner is sufficient to come to a conclusion about the rash and

negligent act on the part of driver of APSRTC; as such, there is no force in the contention raised by the learned counsel for the appellant that there is contributory negligence.

6. Point No.2

The Tribunal, having taken notional income of the injured/respondent-claimant at Rs.2,000/- per month, awarded compensation. The respondent was a Tailor by profession as per her pleading and she was earning Rs.3,000/- per month. The Hon' ble Supreme Court has time and again held in a catena of decisions that the notional income of a person working in an unorganized sector can be taken at Rs.3,000/- per month. The ratio laid down by the Hon' ble Supreme Court in *Ramesh Singh v. Satbir Singh*¹, *New India Assurance Company Ltd. v. Smt. Shanti Pathak*², *Oriental Insurance Co. Ltd. v. Syed Ibrahim*³, *New India Assurance Co. Ltd. v. Kalpana (Smt)*⁴, a decision of High Court of Karnataka at Bangalore in *Sri Appayachari v. K. Vadivel and the New India Assurance Company Ltd., rep. by its Manager*⁵ and a decision of High Court of Calcutta in *United India Insurance Co. Ltd. v. Shri Buro Mahard*⁶, can be taken to assess the notional income of the deceased in this case.

¹ MANU/SC/7089/2008

² MANU/SC/7776/2007

³ MANU/SC/7915/2007

⁴ (2007) 3 SCC 538

⁵ MANU/KA/3721/2013

⁶ MANU/WB/0139/2015

7. In the instant case, the Tribunal has taken the notional income of respondent as Rs.2,000/- per month. The respondent is a tailor by profession. In fact, the Tribunal ought to have taken Rs.3,000/- as notional income per month. However, the respondent has not filed any cross objections or appeal for enhancement of compensation, therefore, the respondent is not entitled for enhancement of compensation in an appeal filed by the appellant-APSRTC.

8. In view of the foregoing reasons, the appellant is not entitled for reduction of the quantum of compensation awarded by the Tribunal. Having regard to the facts and circumstances of this case, the judgment of the Tribunal does not require any interference.

9. IN THE RESULT, the appeal is dismissed. The appellant is directed to deposit the compensation amount as directed by the Tribunal in the order dated 12.09.2007, within one month from the date of receipt of a copy of this order. On such deposit, the respondent is permitted to withdraw the same, as per his entitlement.

Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

11th July, 2018
JR / KSM

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



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