

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

M.A.C.M.A.Nos.2170 & 2253 OF 2005

COMMON JUDGMENT:

Since the facts of the case, issues involved and the accident in both these appeals are one and the same, both the appeals are being disposed of by way of this common judgment.

2. M.A.C.M.A.No.2170 of 2005, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellant/the Andhra Pradesh State Road Transport Corporation at Hyderabad (presently, T.S.R.T.C.) aggrieved by the grant of compensation of Rs.75,000/- as against a claim of Rs.75,000/- by the learned I Additional District Judge, Medak at Sangareddy (for short, "the Tribunal") *vide* order, dated 05.04.2003, passed in O.P.No.251 of 1998 whereas M.A.C.M.A.No.2253 of 2005, under Section 173 of the Motor Vehicles Act is filed by the appellant/R.T.C. aggrieved by the grant of compensation of Rs.55,000/- as against a claim of Rs.75,000/- by the learned I Additional District Judge, Medak at Sangareddy *vide* order, dated 05.04.2003, passed in O.P.No.248 of 1998. Both the O.Ps were disposed of by way of a common order by the Tribunal.

3. Heard the learned Standing Counsel for the appellant/R.T.C. and the learned Standing Counsel for the United India Insurance Company Limited appearing for respondent No.3. There is no representation for the claimants in both the appeals. As the matter pertains to the year 2005, these appeals can be disposed of basing on the material available on record.

4. Learned Standing Counsel for the appellant/R.T.C. would contend that the subject accident occurred due to the rash and negligent driving of the driver of the jeep bearing No.AP. 28 1947 and there is no negligence on the part of the driver of R.T.C. bus bearing No.AP 9 Z 3304, and the police, after thorough verification, filed charge sheet against the driver of the jeep bearing No.AP. 28 1947; that without there being any eye witness being examined on behalf of the claimants, the Tribunal erroneously held that the driver of the jeep bearing No.AP. 28 1947 as well as the driver of the R.T.C. bus bearing AP 9 Z 3304 are equally responsible for occurrence of the accident; that the Tribunal had granted excessive compensation without considering the material on record and ultimately, prayed to set aside the impugned order against the R.T.C. and allow the appeals.

5. Learned Standing Counsel for respondent No.3/United India Insurance Company Limited would contend that the Tribunal, having analysed the entire evidence, rightly found both the vehicles guilty of negligence; that there is no infirmity in the impugned order and ultimately, prays to sustain the impugned order and dismiss the appeals.

6. In view of the submissions made by the learned Standing Counsel on both sides, the points that arise for determination are:

- “1. Whether the Tribunal rightly held that the drivers of both the vehicles are guilty of negligence?***
- 2. Whether the Tribunal is justified in granting compensation of Rs.75,000/- in O.P.No.251 of 1998 and Rs.55,000/- in O.P.No.248 of 1998 in favour of the respective claimants? and***

3. Whether the Tribunal is justified in directing the appellant and respondent Nos.3 and 4 herein to pay 50% of the compensation each?"

7. **POINTS 1 to 3:-** Admittedly, neither the jeep driver nor the driver of the R.T.C. bus was examined to prove the negligence or rashness, as the case may be. The son of the deceased Shankaraiah, who is claimant No.1 in O.P.No.251 of 1998, was examined as P.W.1 and the father of the deceased Ashok, who is claimant No.1 in O.P.No.248 of 1998, was examined as P.W.2. In both the O.Ps, Exs.A-1 to A-3 were got marked, which are certified copies of F.I.R., Post Mortem Examination Report and charge sheet respectively. As per Ex.A-1 – F.I.R, the accident occurred due to the rash and negligent driving of the driver of the R.T.C. bus by its driver. As per Ex.A-3, the subject accident occurred due to the rash and negligent driving of the driver of jeep bearing No.AP. 28 1947. Ex.A-3 was filed after completion of investigation. Merely because Ex.A-3 discloses the rashness and negligence on the part of the driver of the jeep bearing No.AP. 28 1947, it cannot be held that it is a conclusive document. Some oral evidence is necessary to substantiate the averments of Ex.A-3. No such evidence is placed on record. As aforesaid, in O.P.No.251 of 1998, the son of the deceased Shankaraiah was examined as P.W.1 and in O.P.No.248 of 1998, the father of the deceased Ashok was examined as P.W.2. However, P.Ws.1 and 2 are not the eye witnesses to the occurrence of the accident. Both of them stated that the death of the deceased is due to the rash and negligent driving of the driver of the R.T.C. Bus. Admittedly, deceased died in the subject accident. When there is no specific evidence to hold

that one of the drivers was guilty of rashness and negligence, the Tribunal rightly held that both the drivers are equally responsible for the occurrence of the accident and apportioned the liability to both the vehicles equally. There is no infirmity in the said finding. Further, the Tribunal, while assessing the loss, granted compensation of Rs.55,000/- in O.P.No.248 of 1998 and Rs.75,000/- in O.P.No.251 of 1998 together with proportionate costs and interest at the rate of 9% per annum from the date of petition till the date of realisation. The Tribunal had granted reasonable compensation to the claimants. In the circumstances of the case, granting interest at the rate of 9% per annum is not excessive. There are no circumstances to vary on any count. Both the appeals are devoid of merit and are liable to be dismissed.

8. Accordingly, both the appeals are dismissed. There shall be no order as to costs.

9. Miscellaneous petitions pending, if any, in these appeals shall stand closed.

DR.JUSTICE SHAMEEM AKTHER

Date : 17.08.2018
AMD

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER



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