

THE HON'BLE MR JUSTICE N.BALAYOGI

M.A.C.M.A. No.468 of 2010

JUDGMENT:

The appellants – respondents aggrieved by the Award and Decree dated 7.1.2010 in O.P. No.269 of 2009 on the file of the Motor Accidents Claims Tribunal-cum-(District Judge), at Nizamabad, awarding compensation of Rs.2,05,000/- against respondents 1 and 2 jointly and severally with proportionate costs and interest at 7.5% per annum from the date of petition till the date of realization, preferred this appeal.

2. The contention of appellants is that the Tribunal erred in relying on the evidence of P.W.2, who is an interested witness and also responsible for the cause of alleged accident, F.I.R. and charge-sheet. The Tribunal erred in brushing aside the evidence of R.W.1 – driver of the bus and awarded compensation to parents of the deceased boy as dependents.

3. The claim of respondents – claimants is that on 23.6.2007 at 3.30 PM while the deceased S. Murali was crossing the road near Das Nagar X road, Armour road, N.H.16 at Nizamabad District, in the meanwhile RTC bus bearing No.AP 11 Z 5509 came from Nizamabad side and proceeding towards Armour driven in high speed in rash and negligent manner and dashed S.Murali, as a result, he sustained crush

head injury and multiple injuries on other parts of the body and while undergoing treatment, he succumbed to injuries on the next day.

4. The deceased was intelligent, studying 2nd class, hale and healthy and 7 years old. Had he not died, he would have survived up to 70 years or more and due to sudden death, petitioners have lost their affection and future dependency.

5. Respondents contended that the accident was due to fault and negligence of the deceased boy himself because the driver of bus was driving the bus slowly on the left side of the road and having observed one lorry coming in opposite direction, while crossing the said lorry, the deceased boy suddenly came from behind the said lorry and touched the bus and fell down. There was no rash and negligence on the part of the driver of the bus. Petitioners are not entitled for compensation.

6. Having considered pleadings of claimants and respondents and on hearing, the following issues were settled for trial :

- 1) Whether the accident has taken place due to rash and negligent driving of APSRTC bus bearing No.AP-11/Z-5509 by its driver?
- 2) Whether the petitioners are entitled for compensation? If so to what just amount and against whom?
- 3) To what relief?

7. On behalf of claimants, P.Ws.1 and 2 were examined and Exs.A1 to A4 were got marked. On behalf of respondents, R.W.1 was examined and no documents were got marked.

8. Now the point that arises for determination is :

“whether the findings and award of the Tribunal suffer from legal infirmities warranting interference in the appeal?”

The contention of appellants is that the accident was occurred due to rash and negligence of the deceased himself and the Tribunal simply relied on the evidence of P.W.2, F.I.R., Charge-sheet and without considering the evidence of R.W.1 awarded the compensation.

On the other hand, the contention of respondents is that had the boy alive, he would be sufficiently earning and supported claimants in their old age. Accordingly, they lost their future dependency and the Tribunal, having considered both oral and documentary evidence, granted just compensation, which do not suffer from any legal infirmities warranting interference in the appeal.

9. P.W.1 is none other than the 2nd petitioner and mother of the deceased Murali. During cross-examination, she admits that she is not an eyewitness to the accident, so her evidence is of no use for consideration of rash and negligence.

10. P.W.2 is an eyewitness to the accident. Ex.A1 is the F.I.R., Ex.A2 is the charge-sheet and Ex.A4 is the inquest report. The

evidence of P.W.2 is that at the time of accident, she was standing by the side of the road and his nephew S.Murali came from school, got down the bus and while crossing the road, in the meanwhile, RTC bus came from Nizamabad side, which was proceeding to Armoor, dashed the boy and the accident occurred due to rash and negligence of the driver of the RTC bus. In Ex.A1 – F.I.R. Sampangi Gangadhar is the complainant, who is none other than father of the deceased boy and he is also first claimant herein. Basing on Ex.A1 - F.I.R., a case in crime No.94 of 2007 was registered on 23.6.2007, investigated into and charge sheet was filed. There is specific assertion in Exs.A1 and A2 that on 23.6.2007 at about 3.30 PM while Murali was crossing the road, meanwhile RTC bus bearing No.AP 11 Z 5509 proceedings from Nizamabad towards Armoor, driven with high speed in rash and negligent manner, dashed the boy and he was shifted to Hospital in 108 ambulance. The Investigating Officer, after thorough investigation, filed the charge-sheet, wherein P.W.2 is cited as 4th witness. The Investigating Officer clearly found that the driver of RTC bus bearing No.AP 11 Z 5509 on 23.6.2007 at 3.30 PM drove the bus with high speed in rash and negligent manner and dashed Murali, aged 6 years, while crossing the road on NH 16. The inquestdars under Ex.A4 opined that while Murali was crossing the road, the driver of the bus bearing No.AP 11 Z 5509 came with high speed in rash and negligent manner and dashed the boy.

11. Against the evidence of P.W.2 and Exs.A1, A2 and A4, respondents/appellants adduced oral evidence of R.W.1, who is none other than driver of the offending RTC bus bearing No.AP 11 Z 5509 and his evidence is that he reached the place of accident i.e., Das Nagar, he observed that one lorry is coming in the opposite direction and while crossing the said lorry, the deceased boy suddenly came from behind the said lorry and came in front of the bus and fell down, but the police issued F.I.R. wrongly against him on the basis of a false complaint to get compensation. Thus, there is no rash and negligence on his part and the accident was only due to rash and negligence of the deceased. During cross-examination he admits that the police registered criminal case against him which is still pending. There is suggestion to R.W.1 that he deposed falsehood only to avoid compensation.

12. It is pertinent to note that there is direct evidence of P.W.2, who is eyewitness to the accident that on 23.6.2007 at 3.30 PM RTC bus bearing No.AP 11 Z 5509 dashed Murali and immediately after the accident, the complaint was lodged by the father of Murali, who is the first claimant herein at 18.00 hours in respect of the accident occurred on 3.30 PM i.e., immediately after the accident, wherein it is specifically mentioned that the accident was due to rash and negligence of R.W.1, who was the driver of the bus bearing No.AP 11 Z 5509 at the time of accident. The inmates of the bus or the residents of the said locality are the material witnesses. None of them were examined.

More so, the Conductor of RTC bus is also relevant and material witness and he was also not examined. It is the specific assertion of the complainant under Ex.A1 that the accident was occurred due to rash and negligent driving of the driver of RTC bus bearing No.AP 11 Z 5509 and the Investigating Officer, after thorough investigation, filed Ex.A2 – charge-sheet against the driver and it is also a fact that inquestdars under Ex.A4 opined that the accident was due to rash and negligence of the driver of the RTC bus. When the evidence on record of P.W.2 and documentary evidence Exs.A1, A2 and A4 inspires confidence, reliable and trustworthy, the evidence of R.W.1 – driver of the offending vehicle, who is an accused in criminal case for causing the said accident itself, is not sufficient to rebut the direct independent evidence of P.W.2 and documentary evidence of Exs.A1, A2 and A4.

13. Therefore, the evidence of P.W.2, supported by Exs.A1, A2 and A4, which is not sufficiently rebutted by the evidence of R.W.1, well established that the accident was due to rash and negligent driving of R.W.1, who drove the bus bearing No.AP 11 Z 5509 on 23.6.2007 at 3.30 PM with high speed in rash and negligent manner and caused the accident. Even according to R.W.1, he observed the lorry coming from the opposite direction and certainly he should have taken more care and caution and applied breaks and stopped the vehicle. He without any care and caution drove the bus with high speed in rash and negligent manner and dashed Murali, a school going boy of 6-7 years and caused his death.

14. In the facts and circumstances discussed above and findings therein, I am of the considered view that the finding of the Tribunal that the accident was due to rash and negligent driving of the driver of the RTC bus AP 11 Z 5509 is legal, valid and do not suffer from any legal infirmities warranting interference. Hence, the contention of the appellants that the Tribunal simply relying on evidence of P.W.2 and Exs.A1, A2 and A4, brushed aside the evidence of R.W.1 and erroneously awarded the compensation is untenable.

15. Further, the evidence of P.W.1 is that on the date of accident their son Murali was 7 years old, hale and healthy, studying 2nd class and he is an intelligent student and he would have lived up to 70 years, but due to accident, the life of the deceased is shortened and petitioners lost their love and affection of their son. In Ex.A3 - PME report the Doctor opined that death is due to multiple injuries sustained in the accident at 4.30 PM on 24.6.2007, whereas the accident occurred on 23.6.2007 at 3.30 PM, therefore, there is nexus between the accident and death. There must be a lot of expectation by the parents on their son, but he died at the age of 6 years involving in the accident. Accordingly, there is loss of love and affection to parents which cannot be compensated in terms of money. Accordingly, the Tribunal awarded Rs,1,30,000/- towards loss of dependency and Rs.75,000/- towards non-pecuniary damages and in total awarded Rs.2,05,000/- with subsequent interest at 7.5% per annum from the date of the petition till the date of realization against respondents 1 and 2 jointly

and severally and such finding is legal, valid and do not suffer from any legal infirmities warranting interference.

16. In the result, the appeal is dismissed with costs while confirming the award and decree dated 7.1.2010 in O.P.No.269 of 2009 on the file of the Motor Accidents Claims Tribunal (District Judge), at Nizamabad, awarding compensation of Rs.2,05,000/- jointly and severally against respondents 1 and 2 with proportionate costs and interest at 7.5 % per annum from the date of petition i.e., 30.6.2008 till the date of realization. The appellants are directed to deposit the said amount after deducting the amount if any already deposited or paid within a period of thirty days from the date of receipt of a copy of the judgment.

17. The apportionment and permissions accorded by the Tribunal are confirmed.

18. Advocate fee is fixed at Rs.2,500/-.

19. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE N.BALAYOGI

24th January, 2018

skmr