

HONOURABLE MS. JUSTICE J. UMA DEVI

M.A.C.M.A. No.120 of 2010

Judgment:

Having been aggrieved by the award dated:04.04.2009 in M.V.O.P.No.276 of 2007 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, FAC IV-Additional District Judge, Ongole, the respondents in the above mentioned O.P., have come before this Court by preferring the present Appeal.

2. The factual background of the case is briefly as stated under:

The minor children of the deceased-A. Punnamma laid the claim for compensation of Rs.3,00,000/- through their next friend Anuparthi Jalaiah who was none other than their grand-father.

Their case as narrated in pleadings is that, on 05.10.2004 at about 1.30pm., while the deceased-A.Punnamma was proceeding towards Medarametla Thimmanapalem on TVS-50 Moped, driven by her husband, when they reached near Chandra Sekhar hotel at Medarametla village, an APSRTC bus bearing No.AP-11-Z 3960 came in their opposite direction in rash and negligent manner and dashed TVS Moped and it resulted injuries to her spinal cord and to her left hand. Immediately, after the accident, the deceased was shifted to a private hospital at Medarametla village, and after provided with first aid, she was shifted to Government Hospital, Ongole and from there she was referred to Government Hospital, Guntur and there she underwent treatment as an in-patient from 06.10.2004 to 26.11.2004. Due to the injuries she received to the spinal cord, her legs were paralyzed and she lost sense of passing urine and motion and more than Rs.90,000/- was spent towards medical expenditure. Despite the prolonged treatment provided to her in various other hospitals, she

could not regain normal position, finally she succumbed to injuries received in the accident dated:15.7.2005. Minor children of the deceased, therefore, laid the claim against the appellants herein for compensation for Rs.3,00,000/-.

3. The Claim Petition was contested by the Managing Director of APSRTC, Hyderabad, and the rest of the respondent did not choose to respond to the notices sent to him. It was contended by respondent No.2 that there was no negligence on the part of the driver of the APSRTC bus bearing No.AP-11-Z 3960 in causing the accident dated:5.10.2004 and that the accident which resulted injuries to spinal cord of the deceased occurred due to the negligent driving of TVS Moped by her husband. As the TVS Moped could not be controlled by him, it was hit to RTC bus. The driver of TVS Moped, owner and insurer of it though were necessary parties to the petition, were not arrayed as parties to the claim petition. Therefore, their claim ought to have been dismissed.

4. On behalf of petitioners, PWs 1 and 2 were examined and Exs.A1 to A7 were marked. On behalf of respondents, RW.1 was examined but no documents were marked.

5. Among the witnesses examined on behalf of claimants, PW.1 was their grand-father. PW.2-Annangi Yerrababu was the eye witness to the aforesaid accident. It was deposed by PW.2 that on 05.10.2004 at about 1.30pm while the deceased was proceeding to Medazrametla village from Thimmanapalem village as a pillion rider of TVS Moped driven by her husband, when they reached Chandra Sekhar hotel at Medarametla village, an APSRTC bus bearing No.AP-11-Z 3960 came

in their opposite direction in rash and negligent manner and dashed the TVS Moped and the said accident resulted injury to spinal cord of the deceased and to her left hand. Immediately after the accident, the deceased was taken to a nearest private hospital at Medarametla village and after she was provided with first aid, she was shifted to Government Hospital, Ongole and from there, she was brought to Government Hospital, Guntur and there she underwent treatment from 6.10.2004 to 26.11.2004 as in-patient. As she received a fatal injury to spinal cord, her entire body from waist portion paralyzed, and could not able to move from bed and that she lost sense of passing urine and motion and more than Rs.90,000/- was spent towards treatment. Though she was provided with better treatment in various other hospitals, she could not survive and finally she succumbed to the injuries received in the road accident. The copy of the FIR which claimants marked as Ex.A1 would show that a criminal case was registered against the driver of the RTC bus bearing No.AP-11-Z 3960 on the strength of the complaint given by the rider of the TVS Moped/the husband of the deceased.

6. The learned Trial judge on examining the contents of the FIR where it was recited that the driver of the RTC bus drove the bus in rash and negligent manner and came upon the Moped in the process of over taking a tractor which was going ahead of the bus, observed that unless the Moped was driven on wrong side of the road, the question of bus coming over the Moped and hitting it would not arise. The learned trial judge on close scrutiny the evidence of RW.1 so also the evidence of PW.2 and the contents of Ex.A1-FIR came to opinion that there was negligence on the part of rider of TVS Moped to some extent, and that he also contributed for occurrence of accident.

Having coming to such a conclusion, he apportioned negligence on the part of the driver of the APSRTC bus and the rider of TVS Moped in the ratio of 80:20 and accordingly directed the respondents 1 and 2 to pay 80% of the total compensation to the claimants.

7. The petitioners have not filed any appeal and it also has not been contended by their Counsel during the course of hearing of the appeal that the Tribunal has wrongly apportioned negligence on the part of rider of the TVS Moped and the bus driver of RTC in the ratio of 20:80. His only contention is that the award passed by the Court below granting compensation of Rs.3,00,000/- to the claimants is not suffering from patent irregularity and therefore, the award impugned in the appeal needs no intervention.

8. The apportionment of the negligence on the part of RTC bus driver and rider of TVS Moped appears to be done by the trial Court Judge based on the evidence on record particularly on Ex.A1 where it was stated by the rider of the TVS Moped himself that the RTC bus driver in the process of over taking a tractor proceeding ahead of him brought the bus towards the Moped and dashed it etc. PW.2 whom the petitioners arrayed as witness for the accident did not state these facts except reiterating the assertions made by the claimants in their claim petition. As this Court is of the view that the learned trial Judge has thoroughly evaluated the evidence on record before coming to the conclusion that the rider of the moped is responsible to some extent for occurrence of the accident, apportionment of negligence made against the driver of the RTC bus and the rider of the moped in the ratio of 80:20% can be faulted. Accordingly, this Court finds that

there is no merit in the contention of the appellants; that due to the negligent driving of the moped alone, she received fatal injury to spinal cord.

9. Coming to the computation of compensation which according to the appellant/s has been assessed wrongly is concerned, a contention is raised by the appellants that it has not been established by the claimants that the injuries received by the deceased in the accident have got the nexus with her death. To deal with this contention, Ex.A4-wound certificate needs to be perused. Ex.A4-wound certificate discloses that the deceased received grievous injuries to spinal cord and as the result of the said injuries, she could not move both her lower limbs and there was tenderness on right lower chest region. The doctor who issued Ex.A4 on examination of X-ray report noticed fracture to 12th rib on right side, and fracture to T12 vertebra. The doctor opined that the said injuries are possible in a road traffic accident. The deceased was referred to Government General Hospital, Guntur for further treatment by the doctor who issued Ex.A4 wound certificate. As per Ex.A6-discharge summary card issued by the Government General Hospital, Guntur, the complaint of the deceased was diagnosed as Traumatic Paraplegia, and she was provided with treatment for the same and continuous bed rest for six weeks was suggested/advised and spinal brae was applied on 23.11.2004 to make her to sit and was discharged from the hospital on 26.11.2004 with an advice to come for the review on Thursday/Friday. Particulars of further treatment provided to the deceased was not furnished by the petitioners. But according to the petitioners, the deceased was bed ridden and there was no improvement in her condition.

Ex.A5-PM certificate would show that the body of the deceased appeared like a skeleton with skin covered, due to prolonged period of bed ridden all the bone margins were appearing underneath skin due to lack of fat disposition. The opinion as to cause of her death as recited in Ex.A5 was "*delayed complications of spinal bone injury and septicemia*". The learned Trial judge, taking note of the contents of Ex.A4-wound certificate, Ex.A6-discharge summary card and the Ex.A5-PM report of the deceased opined that the injuries received by the deceased in the accident resulted Traumatic Paraplegia. As the medical evidence available in the case record was clear and categorical in respect of injuries sustained by the deceased and the prolonged inability of the deceased to move from the bed which ultimately resulted her death etc., the contention raised by the appellants that there is no nexus between injuries received by her in the accident and her death cannot be accepted. Upon consideration of the medical evidence available in the case record, there cannot be any hesitation for this Court to hold that the Tribunal has rightly observed that the petitioners could not prove that the deceased died due to the injuries received in the accident.

10. The deceased was 25 years old by the date of her death. The Court below assessing the income of the deceased at Rs.3,000/- per month as a Coolie on duty deducting 1/3rd of her income contribution towards personal expenditure, assessed the annual loss of her income to her family at Rs.24,000/-. The Court below by multiplying the annual loss of income contribution of the deceased with Multiplier-17 assessed the loss of income at Rs.4,08,000/-. Thus, Tribunal awarded total compensation of Rs.4,25,000, by adding Rs.17,000/- towards loss of estate and funeral expenditure. As the negligence on the part of the

driver of the APSRTC and the rider of TVS Moped has been assessed at 80:20, the Tribunal has directed the appellants to pay 80% of the compensation assessed by it and the same comes to Rs.3,40,000/-. As the claimants have claimed compensation of Rs.3,00,000/- the Court below has restricted their claim to Rs.3,00,000/- and directed the appellants to pay such amount with interest of 9% per annum from the date of petition to till realization.

11. Upon consideration of the entire evidence on record, this Court finds no valid reason to meddle with the well considered award and the decree passed by the Tribunal except the interest portion which appears to be excessive.

Since the interest awarded on the compensation amount appears to be on higher side, the same is scaled down to 7.5% from 9%.

12. In the light of my afore held discussion, the award under challenge is modified/revised only to the extent of the interest awarded on the compensation, and rest of the award remains as it is. The appeal is allowed only to the extent indicated above. But there shall be no order as to costs.

Pending Miscellaneous Petitions, if any, shall stand closed.

JUSTICE J. UMA DEVI

Dated:07-08-2018

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