

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.Nos.2360 OF 2007, 1688 OF 2014 and

X-OBJECTIONS (SR) No.57969 of 2007

COMMON JUDGMENT:

Challenging the award and decree dated 13.12.2006 passed in O.P.No.3110 of 2004 by the X Additional Chief Judge (Fast Track Court) City Civil Court, Hyderabad, the National Insurance Company Limited filed MACMA No.2360 of 2007, The Andhra Pradesh State Road Transport Corporation (for short 'APSRTC') filed M.A.C.M.A.No.1688 of 2014 whereas the X-Objections (SR) No.57969 of 2007 was filed by the claimant in the said O.P.

For the sake of convenience, parties are hereinafter referred to as they were arrayed in the O.P.

By the impugned award, the Tribunal awarded compensation of Rs.2,00,000/- to the claimant payable by respondents 1 to 3 jointly and severally along with costs and interest @ 7.5% per annum from the date of petition till the date of realization, on account of the injuries sustained by him in the motor vehicle accident occurred on 24.10.2004. Challenging its liability to pay compensation, Insurance Company filed M.A.C.M.A.No.2360 of 2007, APSRTC filed M.A.C.M.A.No.1688 of 2004 and aggrieved by the quantum of compensation, the claimant filed X-objections (SR) No.57969 of 2007.

Brief facts of the case are that the claimant-injured filed claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rules 475/1B of Andhra Pradesh Motor Vehicles Rules, 1989 read with Sections 163-A, 140 (c) of M.V.Act alleging that on 24.10.2004 at about 5.00 a.m. himself and his friend Rajender left

on the motor cycle bearing No.AP 10 C 2813 belonging to Rajender. Claimant was the pillion rider. When they were passing from Nampally to G.P.O. road, one RTC bus bearing No.AP28 U 6255 coming in their opposite direction being driven by its driver in a rash and negligent manner, came on wrong side and dashed the motor cycle in high speed, due to which the claimant fell down and received grievous injuries. Immediately, he was shifted to hospital for treatment. Police registered a case in crime No.419 of 2014 for the offence punishable under Section 337 of Indian Penal Code, which was subsequently altered to 338 IPC. It was further alleged that due to the accident, the claimant was disabled permanently and the accident was occurred due to rash and negligent driving of the driver of the RTC bus.

R.1 is the owner of the offending vehicle, R.2 is the insurer and R.3 is RTC which took the bus on hire from R.1.

Before the Tribunal, R.1 remained *ex parte*.

R.2-Insurance Company filed a counter affidavit denying the material averments of the claim petition and contending that the driver of the motor cycle drove the vehicle in a rash and negligent manner, APSRTC is liable to pay compensation and the claim petition is bad in law for mis-joinder of parties.

R.3-APSRTC filed a counter affidavit stating that there was no negligence on the part of the driver of the RTC bus at the time of the alleged accident and the compensation claimed is excessive and exorbitant.

Based on the above pleadings, the Tribunal framed the following issues for its consideration:

- 1) Whether the accident resulting in injuries to the Petitioner occurred due to rash and negligent driving of the driver of APSRTC bearing No.AP 28 U 6255?
- 2) Whether the Petitioner is entitled for compensation, if so, to what amount and from whom?
- 3) To what relief?

On behalf of the claimant, PWs 1 to 3 were examined and Exs.A.1 to A.10 were got marked. On behalf of the respondents, no witness was examined, however, Ex.B.1 was got marked.

The Tribunal based on the evidence of P.W.1 and Ex.A.1-CC of FIR held that the accident was occurred only due to rash and negligent act on the part of the driver of R.1. As regards quantum of compensation, the Tribunal assessed the disability of the injured as 15%. By taking the monthly income of the deceased as Rs.5,000/- per month and by applying the multiplier '18' as the deceased was aged 27 years, the Tribunal granted Rs.1,62,000/- towards disability. That apart, the Tribunal has granted Rs.12,500/- towards one grievous injury, Rs.2,500/- towards pain & suffering, Rs.53,400/- towards medical bills, Rs.10,000/- towards loss of income, Rs.1,000/- towards extra nourishment and Rs.1,000/- towards transportation. Thus, the Tribunal arrived the total compensation to which the claimant was entitled to at Rs.2,42,400/-, however, as the claim was made only for Rs.2,00,000/-, the compensation was restricted to Rs.2 lakhs.

Questioning the same, these appeals are filed, as stated above.

In this appeal, occurrence of accident on 24.10.2004 and manner of accident are not in dispute.

Learned counsel for the Insurance Company would mainly contend that the Tribunal ought to have seen that by virtue of hire agreement, APSRTC has become the owner of the offending bus as defined in Section 2 (30) of the M.V. Act, during the hire agreement period, and as such APSRTC alone is liable to pay the compensation. He would further contend that the Tribunal ought to have seen that there was contributory negligence on the part of the rider of the motor cycle, as such, the Court below ought to have fastened liability of 50:50 ratio. The Tribunal grossly erred in taking the income of the claimant as Rs.5,000/ per month. The Tribunal ought not to have granted compensation taking the disability as 15% only based on the evidence of P.W.2-Doctor as the same could not be considered as the basis for ascertaining permanent disability in the absence of pleadings and proof.

Learned counsel for APSRTC would contend that the offending bus was hired from R.1 and the same was insured with R.2. Hence, if any compensation is to be paid to the claimant, only R.1 and R.2 are liable to pay the compensation.

Learned counsel for the claimant would contend that though the Tribunal held that the claimant was entitled for the compensation of Rs.2,42,200/- but granted only Rs.2,00,000/- on the ground that the claim before it was only for Rs.2,00,000/-. However, the claimant is entitled for the total compensation of Rs.2,42,200/- in view of the ratio laid down by the Hon'ble Supreme Court in ***Nagappa vs. Gurudayal Singh and others***¹.

Now, the question that arises for consideration before this Court is 'whether the compensation has to be paid by the

¹ (2003) 2 SCC 274

respondents 1 and 2 jointly and severally as per the Policy or by APSRTC alone as per Hire Agreement as defined under Section 2 (30) of the M.V.Act?

In similar circumstances, the Hon'ble Supreme Court in ***Managing Director, Karnataka State Road Transport Corporation vs. New India Assurance Company Limited and others***² duly considering the provisions of Section 2(30) of the M.V.Act held that the registered owner, insurer as well as KSRTC would be liable to pay compensation jointly and severally to the claimants therein, however, KSRTC in terms of the lease agreement entered into with the registered owner would be entitled to recover the amount paid to the claimants therein from the owner, as stipulated in the agreement or from the insurer. In the present case, agreement entered by the APSRTC with the owner of the offending bus is not filed before the Court. Hence, following the ratio laid down by the Hon'ble Supreme Court in ***KSRTC (2 supra)***, this Court is of the considered view that R.1 to R.3 are jointly and severally liable to pay the compensation to the claimant. However, liberty is given to APSRTC-R.3 to recover the amount paid to the claimant from the owner of the bus i.e. R.1, if it is entitled to do so as per the agreement entered by it with R.1. Further, as the offending bus was insured by its owner i.e. R.1 with R.2, R.2 is liable to indemnify the insured-R.1.

As regards quantum of compensation, the Tribunal based on the evidence of P.W.1 and Ex.A.1 coupled with the evidence of R.W.2 held that the accident occurred due to rash and negligent driving of the driver of R.1 and the claimant sustained injuries.

² (2016) 2 SCC 382

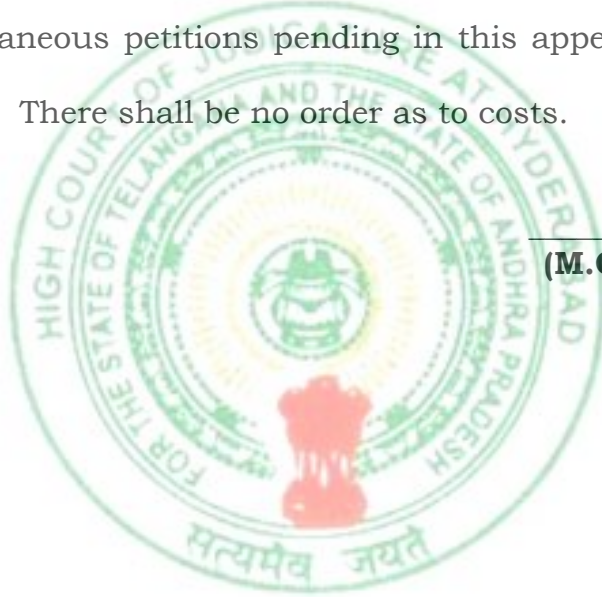
The evidence of P.W.1 is that he used to earn Rs.5,000/- per month by working as Executive in Marketing and Verification Agent in People's Associates. Based on the above evidence, the Tribunal took the earnings of the deceased as Rs.5,000/- per month. As the claimant was aged about 27 years, the Tribunal adopted the multiplier '18'. Further, the Tribunal, as per the evidence of P.W.2-Doctor held that the injured sustained 15% disability. Thus, the Tribunal granted Rs.1,64,000/- towards loss of income. That apart, the Tribunal granted Rs.12,500/- towards one grievous injury, Rs.2,500/- towards pain & suffering, Rs.53,400/- towards medical bills, Rs.10,000/- towards loss of income, Rs.1,000/- towards extra nourishment and Rs.1,000/- towards transportation. In all, the Tribunal arrived the total compensation to which the claimant was entitled to at Rs.2,42,400/-, however, as the claim was made only for Rs.2,00,000/-, the compensation was restricted to Rs.2 lakhs. But, in view of the ratio laid down by the Hon'ble Supreme Court in **Nagappa vs. Gurudayal Singh and others**³ wherein it is held that in M.V.Act there is no restriction that the compensation should be awarded only upto the claim made by the claimants. Hence, the claimant is entitled for the total compensation of Rs.2,42,490/- as arrived by the Tribunal without restricting the same to the claim made. Further, there is no evidence on record to prove contributory negligence on the part of the driver of the motor cycle, as contended by the learned counsel for the Insurance Company. Hence, the said contention could not be countenanced.

³ (2003) 2 SCC 274

Accordingly, MACMA Nos.2360 of 2007 and 1688 of 2014 are disposed of and X-objections (SR) No.57969 of 2007 is allowed enhancing the compensation to Rs.2,42,490/- along with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of realization. The entire compensation amount shall be deposited before the Tribunal to the credit of the O.P. along with proportionate costs and interest, after deducting the amounts if any already deposited, within a period of one month from the date of receipt of a copy of this order. On such deposit, the appellant can withdraw the same.

Miscellaneous petitions pending in this appeal, if any, shall stand closed. There shall be no order as to costs.

06.12.2018
sur



(M.GANGA RAO, J)