

THE HON'BLE SRI JUSTICE N.BALAYOGI

M.A. C.M.A. No.626 of 2011

JUDGMENT :

The appellants/respondents aggrieved by the Award and Decree dated 27.10.2010 in O.P.No.1630 of 2008 of the I Additional Metropolitan Sessions Judge-cum-XV Additional Chief Judge, Hyderabad, awarding Rs.7,30,000/- with interest at 7.5% per annum from the date of the petition till the date of deposit or realization against respondents therein, preferred this appeal.

2. The claim of the respondents/claimants was that on 4.1.2008 while the deceased was boarding APSRTC bus of Pargi Depot at 119 bus stop, in the meanwhile, the driver of the bus drove the bus in high speed in rash and negligent manner, thereby deceased Sampath Kumar fell down on the road and rear wheels of the bus ran over him. On the same day, Sampath Kumar succumbed to injuries. The accident was due to rash and negligent driving of the driver of the APSRTC bus bearing No.AP 10 Z 8125.

3. The deceased was 19 years old and was an engineering student and used to earn Rs.10,000/- per month by conducting tuitions. Petitioners are mother, father and sister of the deceased who lost valuable support of the deceased.

4. The respondents filed counter contending that the negligence of the deceased while boarding the bus cannot be ignored

and that claimants have to prove accident involving the RTC bus and rash and negligence of its driver and age, educational qualification and earnings of the deceased. The amount claimed is excessive.

5. Basing on the pleadings and also on the hearing, the following issues were settled for trial :

1. Whether the death of the deceased was due to rash and negligent driving of the driver of the APSRTC bus bearing No.AP 10 Z 8125 in the motor accident dated 4.1.2008?
2. Whether the claimants are entitled to any compensation as prayed for? If so, from whom?
3. To what relief?

6. In support of the claimants, P.Ws.1 and 2 were examined and Exs.A1 to P16 were got marked. On behalf of respondents, no oral or documentary evidence was adduced.

7. Now, the point that arises for determination is :

“Whether the Award and Decree suffer from any legal infirmities warranting interference in the appeal?”

The learned counsel for the appellants contended that the Tribunal erred in holding that the accident was due to rash and negligent driving of the driver of the RTC bus and it ought to have held that the deceased was equally responsible for the accident as he tried to board a running bus. It is further contended that the Tribunal erred in assessing the deceased's monthly income at Rs.8,000/- per month without there being any income proof and it ought to have taken the notional income of Rs.15,000/- per annum.

Per contra, the respondents/claimants contended that the deceased was not responsible for the accident and the accident was due to negligence of the driver of the RTC bus himself and income assessed at Rs.8,000/- per month is very meagre for a B.Tech. graduate and there is no absurdity or illegality in the Award passed by the Tribunal warranting interference.

8. The case of the claimants is that they are the parents and sister of the deceased Sampath Kumar and this fact is not disputed by respondents by way of cross-examining P.W.1. Therefore, undisputedly the claimants are parents and sister of the deceased.

9. P.W.1 is none other than mother of the deceased. Admittedly, she is not eye-witness to the accident. Still, there is evidence of P.W.2, who is material and eye-witness to the accident. Ex.A1 is the certified copy of the F.I.R., Ex.A2 is the certified copy of the charge-sheet, Ex.A3 is the certified copy of the inquest report and Ex.A5 is the MVI report. The evidence of P.W.2 supported by documents Exs.A1 to A3 and A5 goes to suggest that on 4.1.2008 at 8.45 AM while P.W.2 was waiting in the Langerhouse bus stop to go to Moinabad JBIT college, at that time, the RTC bus bearing No.AP 10 Z 8125 of Pargi Depot came from Mehdiapatnam and stopped there. While some passengers are get into the bus, suddenly, the driver of the said bus moved the bus in rash and negligent manner, as a result, one student by name, Sampath Kumar, who is friend of P.W.2, fell down on the road and the said bus ran over him. P.W.2 is the complainant under

Ex.A1, the same facts were narrated in the F.I.R. that while they were trying to get into the bus, the driver of the bus has moved the bus in rash and negligent manner without stopping in the bus stop. Sampath Kumar fell down on the road and the bus's back wheel went over his hip region. The Investigating Officer under Ex.A2, after thorough investigation, filed the charge against the driver of the RTC bus bearing No.AP 10 Z 8125 finding that the bus came in rash and negligent manner and slowed down at 119 bus stop. While the deceased and his friends getting into the bus, the driver of the bus has moved the bus suddenly without stopping at the bus stand. Due to which, he fell down and came under the back wheel of the bus and received hand and back bone, anal part bleeding injuries and the bus sped away from the spot. P.W.2 is cited as L.W.1 – complainant in Ex.A2 – charge-sheet. Therefore, P.W.2 is an eye and direct witness to the accident. Ex.A5 is the M.V.I. report wherein the M.V.I. opined that the accident took place not due to any mechanical defects of the RTC bus. The inquestdars under Ex.A3 opined that the accident was due to rash and negligent driving of the RTC bus driver.

10. The Tribunal elaborately discussing the evidence of P.Ws.1 and 2 and considering the documentary evidence under Exs.A1 to A3 and A5 came to the conclusion that P.W.2 is an eye and direct witness. He was also waiting in the bus stop along with the deceased Sampath Kumar. Though P.W.2 was cross-examined at length, the prosecution could not elicit any favourable material to suspect or discard the

evidence of P.W.2. To rebut the evidence of P.Ws.1 and 2, the appellants did not produce any oral or documentary evidence. The Driver and the Conductor of the R.T.C. bus and also the passengers in the bus are relevant and proper witnesses. It is not the case of the appellants that the Driver and Conductor of the said bus are not available for their examination and more so, they are under the supervision and control of the appellants themselves. The non-examination of the Driver and Conductor is fatal and the evidence of P.Ws.1 and 2 corroborated and supported by Exs.A1 to A3 and A5 established the rash and negligence on the part of the RTC bus driver, who, without stopping the bus, slowed down and suddenly moved while P.W.2 and others boarding the bus, which clearly shows the rash and negligence. Nothing more is necessary to establish the rash and negligence of the RTC bus driver.

11. With regard to the age and quantum of the compensation, there is the evidence of P.W.1, who clearly stated that her son was 19 years old by the date of the accident and he was studying engineering and apart from that, he was conducting tuitions and thereby used to earn Rs.10,000/- per month. Due to sudden death, petitioners, lost their support of the deceased in future. To substantiate that the deceased Sampath Kumar was studying engineering, they filed Ex.A6 – SSC certificate, according to which he passed SSC in the year 2005 and his date of birth was 3.8.1990, whereas accident and death was on 4.1.2008. Ex.A7 is the study and conduct certificate from 5th to 10th class. Ex.P8

is the Memo of marks of intermediate. Ex.P9 is the conduct certificate of the deceased from 6th to 10th class. Ex.P10 is the EAMCET hall ticket for the EAMCET examination of 2007. Ex.P11 is the EAMCET receipt, dated 11.8.2007. Ex.P12 is the EAMCET allotment letter allotting the deceased to JB institute of Engineering & Technology, Yenkapally, Moinabad for the year 2007 for the B.Tech. course. Ex.P13 is the engineering fee receipt paid by petitioners for the course on 27.9.2007 in the first year. Ex.P15 is the engineering bona fide certificate. Ex.P16 is the bus pass of the same year. It is an undisputed fact that for the academic year 2007-2008, the deceased was 1st year B.Tech. student. Accordingly, by the date of the accident i.e., on 4.1.2008, he should be 1st year B.Tech. student.

12. By relying the decision in the case of ***B.Ramulamma v. Venkatesh Bus Union*** (2009(6) ALT 784) wherein this High Court held that for an engineering graduate the income can be assessed at Rs.12,000/- per month, the learned counsel for claimants urged to take Rs.12,000/- per month as income of the deceased.

13. *Per contra* counsel for the RTC contended that since the deceased was only 1st year engineering student, the question of taking Rs.12,000/- per month as income of the deceased does not arise. The Tribunal, considering the oral evidence of P.W.1 and also the fact that the deceased was 1st year B.Tech. student by the date of the death and the Tribunal by guess work, as stated in the above decision, held that the deceased was not an engineering graduate as on the date of the accident.

Had he been alive, he would have completed the engineering and become engineering graduate and finally assessed the income of the deceased at Rs.8,000/- per month and 50% of the same was deducted towards his expenses, had he been alive, as the deceased was unmarried and student and arrived the contribution to the family at Rs.4,000/- per month and Rs.48,000/- per annum.

14. The Tribunal, taking into consideration the age and multiplier of a student of 1st year engineering, took the age of the mother, whose age was mentioned as 36 years in the affidavit, which is not seriously disputed by the learned counsel for RTC. By considering the age of the mother and taking it as 36 years, applied multiplier '15' as per *Sarla Verma's case* ((2009) 6 SCC 121) and arrived at the compensation of Rs.7,30,000/- and awarded interest at 7.5% per annum from the date of the petition till the date of deposit or realization.

15. In view of the above facts, I am of the considered view that the Tribunal, considering both oral and documentary evidence into consideration, assessed the monthly income of the deceased, who is a 1st year B.Tech. student, at Rs.8,000/-, which is legal and does not suffer from any legal infirmities warranting interference. Since the deceased was below 19 years, the tribunal took the age of the mother and applied multiplier '15'. Because the deceased was a bachelor and unmarried, though the income was taken as Rs.8,000/- per month, deducted 50% towards his expenses had he been alive and arrived monthly dependency at Rs.4,000/- per month and on that compensation is awarded. There is

no wrong or illegality in the findings of the trial Court and also in awarding compensation.

16. In the result, the appeal fails and is dismissed with costs while confirming the Award and Decree dated 27.10.2010 in O.P.No.1630 of 2008 of the I Additional Metropolitan Sessions Judge-cum-XV Additional Chief Judge, Hyderabad, awarding Rs.7,30,000/- with interest at 7.5% per annum from the date of the petition till the date of deposit or realization.

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

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

01st August, 2018

skmr

JUSTICE N.BALAYOGI

