

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.679 OF 2011

JUDGMENT:

The appellant-Andhra Pradesh State Road Transport Corporation filed this appeal against the order and decree dated 29.09.2009 passed in M.V.O.P.No.85 of 2008 by the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Tirupati, granting compensation of Rs.3,93,500/- against the claim of Rs.6,00,000/- for the untimely death of one K.Bhogi Raju (hereinafter referred to as 'deceased') in the motor accident occurred on 10.01.2008.

Respondents 1 to 3-claimants filed claim petition under Section 166 (1) (c) of the Motor Vehicles Act, 1988 read with Rules 455 and 475 of Andhra Pradesh Motor Vehicles Rules, 1989, alleging that on 10.01.2008 at about 3.15 p.m. while the deceased was proceeding from his house to Bus Stand, when he reached near Korlagunta Bajanagudi, Tirumala Bye Pass Road, Tirupati, one APSRTC bus bearing No.AP10Z 906, belonging to the appellant, being driven by its driver in a rash and negligent manner dashed against the deceased. As a result, the deceased fell down and sustained severe head and bodily injuries. Immediately, he was shifted to SVIMS Hospital, Tirupati, where he was declared as brought dead.

The claimants, who were the wife and children of the deceased respectively, have lost their only breadwinner in the accident. At the time of the accident, the deceased was aged about 30 years, hale and healthy, doing the business of preparation and supply of samosas and also doing Real Estate business, thereby

earning more than Rs.12,000/- per month and contributing the same to his family.

The appellant-Corporation filed a counter affidavit denying all the material averments of the claim petition and specifically contending that while the offending bus reached near Korlagunta Bus Stop, its driver stopped the bus and after alighting of some of the passengers, the driver moved the bus slowly. At that time, the deceased, who was in a drunken condition, was walking on the road in a zig zag manner. Even though the driver of the bus drove the bus in a careful manner, due to drowsiness, the deceased fell on the rear wheel of the bus and sustained bleeding injuries. On noticing the same, the driver of the bus stopped the bus, made a phone call to '108' Ambulance and shifted the deceased to SVRRGG Hospital, Tirupati. It was further averred that, on enquiry, it came into light that due to family disputes the deceased himself intended to commit suicide and fell under the moving bus. Though the driver of the bus was very cautious, due to negligence of the deceased the accident was occurred. The claim was excessive and exorbitant. Thus, finally, prayed to dismiss the claim petition.

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

- 1) Whether the deceased K.Bhogiraju, husband of the 1st petitioner and father of the 2nd and 3rd petitioners, died in a motor vehicle accident that took place on 10-1-2008 about 3-15 P.M. near Korlagunta Bajanagudi, Tirumala Bye Pass Road, Tirupati, due to rash and negligent driving of the driver of the A.P.S.R.T.C. Bus bearing Regn.No.AP10Z 906 belonging to the respondent Corporation?

- 2) Whether the petitioners are entitled to compensation? If so, to what amount and from whom?
- 3) To what relief?

On behalf of respondents 1 to 3-claimants, PWs 1 and 2 were got examined and Exs.A.1 to A.5 were got marked. On behalf of the appellant-Corporation, no oral and documentary evidence was adduced.

The Tribunal, on careful examination of the evidence of PWs 1 and 2 coupled with Exs.A.1 to A.5, came to the conclusion that though PWs 1 and 2 were not the eye witnesses to the accident, no material was placed to impeach their evidenced by the appellant in the cross-examination. The Tribunal also observed that the contents of FIR, Charge sheet and other documents marked on behalf of the claimants would clinchingly prove the fact that the accident was occurred and it was also manifest from the charge sheet allegations that RTC bus driver was rash and negligent in driving the offending vehicle and thus caused the accident which resulted in death of the deceased. Accordingly, the Tribunal answered the issue No.1 in favour of the claimants and against the appellant.

The Tribunal has taken the income of the deceased as Rs.3,000/- per month. After deducting 1/3rd therefrom towards personal expenses and applying the multiplier '16', as per the Second Schedule, the Tribunal has assessed the loss of dependency at Rs.3,84,000/-. Further, the Tribunal also granted Rs.5,000/- to the wife of the deceased towards loss of Consortium, Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of Estate. Thus, in all, the Tribunal granted the total compensation of Rs.3,93,500/- along with costs and interest

@ 7.5% per annum payable by the appellant. Aggrieved by the same, the present appeal came to be filed.

During pendency of the appeal, the parents of the deceased filed MACMA MP No.2679 of 2011 seeking to implead them as respondents 4 and 5 in the appeal and the same was allowed by this Court on 23.09.2011.

The learned counsel for the appellant-Corporation would contend that the Court below erred in holding that there was negligence on the part of the driver of the bus. The Tribunal erred in taking the monthly income of the deceased as Rs.3,000/- without therebeing any proof and the Tribunal has not considered the evidence in proper perspective. The Tribunal also erred in placing more reliance on the evidence of PWs 1 and 2. Finally, she would contend that the order of the Tribunal suffers from several legal infirmities and is liable to be set aside.

None appears on behalf of respondents 1 to 3.

Sri V.V.Satish, learned counsel appearing for respondents 4 and 5, would contend that respondents 4 and 5 are the parents of the deceased. The deceased, who was their elder son, left to Tirupati in the year 2000 and settled there by doing Samosa business. He used to send money for the maintenance of his old aged parents. After sometime, these respondents came to know that the deceased married the 1st claimant and were blessed with two kids. After coming to know about the death of the deceased in the bus accident, immediately they rushed to Tirupati and performed the funerals. They were illiterates and ignorant of Court proceedings. He would further contend that the 1st claimant was not the legally wedded wife and claimants 2 and 3 were not

the children of the deceased. The marriages of claimants 2 and 3 were already performed before the death of the deceased and these respondents are the only legal heirs of the deceased and are entitled for compensation. Further, the age of the deceased was wrongly mentioned as '39' instead of '33' years.

In the facts and circumstances of the case and in considered view of this Court, the Tribunal based on the evidence of PWs 1 and 2 coupled with the documents under Exs.A.1 to A.3 rightly held that though PWs 1 and 2 are not the eye witnesses to the occurrence of the accident, the appellant failed to adduce any material to impeach their evidence in the cross examination and thereby held that the accident was occurred due to rash and negligent driving of the driver of the RTC bus. In the absence of any contrary evidence, the said finding of the Tribunal cannot be found fault with.

Though it was claimed that the deceased used to earn more than Rs.12,000/- per month by doing Samosa business and Real Estate business, in the absence of any supporting evidence either oral or documentary, the Tribunal has taken the income of the deceased as Rs.3,000/- per month, which cannot be said to be on higher side. After rightly deducting 1/3rd from the gross earnings of the deceased towards personal expenses and applying the appropriate multiplier of '16', loss of dependency was arrived at Rs.3,84,000/-. Further, the Tribunal has granted very meagre amounts towards loss of Consortium, loss of Estate and funeral expenses. Hence, the total compensation of Rs.3,93,500/- granted by the Tribunal cannot be said to be excessive. This Court finds

no illegality or irregularity in the impugned order passed by the Tribunal. Accordingly, the appeal is dismissed.

However, having considered the arguments of the learned counsel for respondents 4 and 5, this Court is of the view that granting of some amount to them would meet the ends of justice. Hence, out of the total compensation granted by the Tribunal, the wife of the deceased is entitled for Rs.1,93,500/- along with proportionate costs and interest whereas respondents 2 to 5 herein are entitled for Rs.50,000/- each along with proportionate costs and interest. The appellant shall deposit the entire compensation amount to the credit of the O.P. before the Tribunal within a period of two months from the date of receipt of a copy of this order. Amounts already deposited shall be given credit. On such deposit, the respondents can withdraw their respective share amounts. However, the amounts already withdrawn by respondents 1 to 3 shall be deducted from their share amounts while settling the compensation. Except the above modification in apportionment of the compensation, the rest of the impugned order holds good.

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

(M.GANGA RAO, J)

30.11.2018
sur / anr