

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3230 OF 2005

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the appellant-KSRTC aggrieved by the order dated 25.11.2002 in M.V.O.P.No.674 of 2001 on the file of the Motor Accident Claims Tribunal-cum-II Additional District Judge, Kurnool (for short 'the Tribunal').

2. Heard the learned Standing Counsel for appellant-KSRTC, the learned counsel for the respondents-claimants and perused the record. The appeal against respondent No.5 was dismissed for default on 06.01.2012.

3. The learned Standing Counsel for appellant-KSRTC would contend that there was no negligence on the part of the driver of the RTC bus in causing the accident and death of the deceased. However, ignoring the evidence of R.W.1-driver of the bus, the Tribunal erroneously held that the driver of the RTC bus was negligent in causing the road accident and granted the compensation against the KSRTC, who is the appellant herein. He also contended that the grant of compensation of Rs.2,61,000/- by the Tribunal, on account of the death of the deceased-G.Ramana, is excessive. Further, he relied on the judgment rendered by this Court in M.A.C.M.A.No.73 of 2005 dated 14.06.2006, wherein the subject accident was in question, this Court upheld the finding of the Tribunal in apportioning the liability between the two vehicles i.e., in the ratio of 60% and 40% against the driver of RTC bus and the motorcyclist respectively. Relying on the same, it is contended that in the subject accident, there is contributory

negligence on the part of the deceased and the liability is to be apportioned in the ratio of 60% and 40%.

4. On the other hand, the learned counsel for the respondents-claimants would contend that there is ample evidence on record to hold that there was rashness and negligence on the part of the driver of the RTC bus. The Tribunal justified in fastening the entire liability against the KSRTC. The award of compensation of Rs.2,61,000/- is just and reasonable. There are no circumstances to interfere with the same and ultimately, prayed to dismiss the appeal.

5. In view of the submissions made by both sides, the points that arise for determination are as follows: -

1. Whether the Tribunal justified in granting the compensation of Rs.2,61,000/- with interest @ 9% per annum?
2. Whether the liability between the two vehicles be apportioned in the ratio of 60% and 40% as contended by the appellant-KSRTC?

6. As per the evidence available on record, the deceased-G.Ramana was 35 years old and he was a mechanic. The Tribunal took his monthly income at Rs.1,800/-, deducted 1/3rd thereof towards personal his expenses, applied multiplier '17' and awarded Rs.2,44,800/- towards loss of dependency. The Tribunal granted Rs.2,000/- towards funeral expenses, Rs.9,200/- towards loss of estate and Rs.5,000/- towards loss of consortium. In all, the Tribunal granted Rs.2,61,000/- with interest @ 9% per annum. The grant of compensation of Rs.2,61,000/- for the death of a mechanic, who is aged 35 years, is not excessive. The Tribunal justified in granting the

same. There are no grounds to interfere with the same. Point No.1 is answered accordingly.

7. POINT No.2:- P.W.2 is an eye witness to the accident. It is his evidence that on 06.06.2001 at about 3:00 P.M., himself and one Venkata Swamy were proceeding to Nandanapalli Village by Suzuki motorcycle bearing registration No.ATQ 6232 and they saw the deceased and another coming by motorcycle towards Kurnool. There is specific evidence of P.W.2 that the subject accident occurred due to the rash and negligent driving of the driver of bus bearing No.KA 28F 906. P.W.2 was subjected to lengthy cross-examination. He denied the suggestions and did not admit that the deceased, who was the rider of the motorcycle, was responsible for the occurrence of accident in any manner whatsoever. Ex.A1 is the certified copy of FIR, wherein it is mentioned that the subject accident occurred on 06.06.2001 at 3:00 P.M. due to the rash and negligent driving of the driver of RTC bus. P.W.2 witnessed the occurrence of the accident from a distance of 20 meters. He is an independent witness. Nothing is elicited in the evidence of P.W.2 that there is any rashness or negligence on the part of the rider of the motorcycle i.e., the deceased herein. R.W.1 is an interested witness. Though he stated that the accident occurred due to the rash and negligent driving of the rider of the motorcycle, no credibility can be given to his evidence. No independent witness is examined to rebut the evidence of P.W.2. Having considered the entire criminal case record and the oral evidence, the Tribunal rightly held that the accident occurred due to the rash and negligent driving of the driver of RTC bus bearing No.KA 28F 906.

8. It is appropriate to state that the pillion rider had filed O.P.No.612 of 2001 before the Tribunal, wherein the Tribunal held that the subject accident occurred due to the negligence of both the vehicles and fixed the ratio at 60% and 40%. The same was confirmed by this Court in M.A.C.M.A.No.73 of 2005. The learned counsel for the appellant has brought to the notice of this Court about the order passed by this Court in M.A.C.M.A.No.73 of 2005 on 14.06.2006, but did not file the record related to it. Sometimes it happens when different claim petitions are filed relating to one accident, if the claimants therein could not adduce required evidence to establish the rashness and negligence on the part of the offending vehicle. Sometimes other claimants would adduce required evidence to prove the rashness and negligence on the part of the vehicle in question. So, different findings are passed by the Tribunals and also in the appeal by the High Court. It appears that the claimants in M.A.C.M.A.No.73 of 2005 did not adduce required evidence to prove the rashness and negligence on the part of the driver of the KSRTC bus only. But in the instant case, there is ample evidence to prove the rashness and negligence on the part of the driver of the KSRTC bus. So, it is not proper to disturb the said findings. The appeal is devoid of merit. Pint No.2 is answered accordingly.

11. In view of the above discussion, the appeal is dismissed.

The Miscellaneous Petitions, if any, pending shall stand closed.

No costs.

Dr. SHAMEEM AKTHER, J

Date: 19.09.2018
ssp