

THE HON'BLE MS JUSTICE J.UMA DEVI

MACMA No.281 of 2010

JUDGMENT

Having been aggrieved by the order dated 16.04.2009, in M.V.O.P. No. 220/2008, on the file of the Chairman-MACT-cum-District Judge, Ongole, making the appellants herein liable to be paid compensation of Rs.9,27,000/- together with interest @ 9% per annum, with proportionate costs thereon, in respect of death of B.V.S. Prasad in a road accident dated 20.03.2008, they filed present appeal.

2. The appellants herein are the driver of the APSRTC bus bearing No.AP-11-Z-118 and Vice-Chairman and Managing Director, A.P.S.R.T.C Musheerabad, Hyderabad, they are arrayed as respondent Nos.1 & 2 in O.P.No.220 of 2008.

3. The factual background of the case is briefly stated as shown.

The respondents herein are the wife and parents of the deceased B.V.S. Prasad, who died in the road accident on 20.03.2008. They asserted that on 20.03.2008 at about 7.30 P.M., when the deceased and his wife (1st respondent herein) were proceeding towards Jandrapet on a motor cycle bearing No. AP 27 J 6650, when they reached near spinning mill, A.P.S.R.T.C. bus bearing No. A.P.-11-2-118, (for short APSRTC) being driven by the 2nd appellant, in rash and negligent manner, came towards left side to the motor cycle and hit the motor cycle in the process of overtaking an Auto and due to the said impact, the deceased who was driving the motor cycle and his wife who was accompanying him fell down, and that the deceased received fatal injuries and died on the spot. The Police of Vetapalem Police Station registered a case in Crime No.51 of

2008 against the driver of the R.T.C. bus and filed a charge sheet against him.

It was further asserted by the respondents that the deceased was working in Air Force Academy at Lucknow and was earning Rs.11,930/- per month and contributing his entire salary for their maintenance. As the driver of the APSRTC bus was responsible for the death of the deceased, due to which the respondents lost love and affection of the deceased, they laid the claim for compensation of Rs.50,00,000/-.

The Court below, on appreciation of evidences of P.W.1 and 2 and Ex.A1 to A3, partly allowed their claim by granting compensation of Rs.9,27,000/- and directed the APSRTC to pay the said compensation amount together with interest @ 9% per annum from the date of filing of the petition to till realisation.

4. Being aggrieved by the award passed by the Court below, making the appellant - APSRTC to pay the compensation of Rs.9,27,000/- together with interest and costs, the present appeal is filed.

5. The grievance of the appellants - APSRTC is that the deceased himself was responsible for occurrence of the accident; due to the negligence driving of the motor cycle by him, he lost control over it and thus the motor cycle driving by him was hit to RTC bus. The deceased had no valid and substantial driving licence to drive the motor cycle. In Para-4 of the award it was observed by the Tribunal that there is a contributory negligence on the part of rider of the motor cycle. The Tribunal though clearly held that the deceased would not have died in the accident if he had taken care of himself by driving the motor cycle slowly on left side of the road, while the bus was overtaking the auto. The Tribunal though held that the deceased failed to take necessary

precautions while riding the motor bike, held the driver of the APSRTC bus also responsible for occurrence of the accident. Apportionment of the negligence as against the driver of the APSRTC bus and deceased, in the ratio of 60:40 percent ought not to have been made by the Tribunal in view of the conclusions arrived by it that the deceased failed to take requisite care while riding the motor cycle. The other contention of APSRTC is in respect of quantum of compensation,

6. I have gone through the award under challenge. I have also gone through the oral and documentary evidence available in the case record.

7. It is manifestly clear from the evidence on record that while deceased and his wife were proceeding towards Santanpur on a motor bike, the bike was hit by an RTC bus.

8. The Court below on close scrutiny of the report of Motor Vehicle Inspector observed that there was no damage to the bus. As there was no damage to the bus, the Trial judge arrived to a conclusion that there was no direct hitting of the bus to the motor bike. It was recited in Ex.A5 – Charge Sheet that right side tyre of R.T.C. bus ran over the deceased. The Tribunal also examined the rough sketch of the scene of offence – Ex.B.1; Inquest report, charge sheet (Ex.A5) and report of the Motor Vehicle Inspector – Ex.A4, on examining the contents of afore mentioned documents and the evidence of PW-2, the Court below came to an opinion that there was negligence on the part of the deceased also who failed to have necessary care while driving the motor bike.

9. The Tribunal before making an observation that there is negligence on the part of the deceased also evaluated the evidence on record.

10. Coming to the contention of the appellant in so far as the computation of compensation, the petitioner to prove the income earned by

the deceased through salary have produced Ex.A6 – pay slip, issued by Air Force Academy. Taking note of the gross salary particulars mentioned in Ex.A.6 – pay slip, the Tribunal has reasonably estimated the earning of the deceased at Rs. 10,500/- per month. The Court below on verification of the contents of the Inquest Report and Postmortum report of the deceased where his age is showed as 26 years, applied multiplier 18 and estimated loss of his income contribution to his family at Rs.15,12,000/- on duly deducting 1/3 of his income towards his personal expenditure. If the amount of Rs.32,000/- awarded towards loss of estate, consortium and funeral expenditure is added to Rs.15,12,000/- the total compensation which the petitioners are entitled to get comes to Rs.15,44,000/-. The petitioners are entitled to get 60% of such amount and the same comes to Rs.9,26,400/- as it has been held that the deceased also contributed for the occurrence of the accident. Accordingly, the appellant is directed by the lower court to pay 60% of the total compensation of Rs..15,44,000/- which comes to Rs.9,26,400/- and is rounded off to Rs. 9,27,000/-

11. As the compensation awarded by the Court below appears to be reasonable and fair, the award under challenge deserves to be confirmed except the interest portion which appears to be excessive. Since it is opined that rate of interest awarded on the compensation is excessive the same is scaled down to 7.5% per annum.

12. In the result, the appeal is allowed in part, reducing the rate of interest to 7.5% from 9% . Rest of the award passed by the Court below is remained as it is. No orders as to costs.

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

JUSTICE J.UMA DEVI

Dated: 27.07.2018
JR

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