

HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A. No. 165 OF 2011

JUDGMENT:

This appeal is filed by the APSRTC- 2nd respondent under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the order and decree dated 28.01.2005, in O.P.No.916 of 2001 passed by the Motor Accidents Claims Tribunal-cum-District Judge, East Godavari at Rajahmundry (for short, 'the Tribunal'), whereby, the Tribunal granted compensation of Rs.2,48,000/- with proportionate costs and interest @ 6% per annum from the date of petition till the date of deposit.

2. The claimants, who are wife, daughters, son and parents of one M.Kondayya (hereinafter referred to 'as the deceased') filed the above said O.P. under Section 166 of the Act claiming compensation of Rs.3,70,000/- on account of death of the deceased in a motor vehicle accident occurred on 06.10.2001.

3. The brief facts of the case are that on 06.10.2001, while the deceased was riding the cycle towards Komaradevam from Chidipi on the left side of the road, the driver of APSRTC drove the bus bearing registration No.AP-11-Z-913 in a rash and negligent manner and dashed against the deceased from back side, due to which he fell down from the cycle and sustained injuries. Immediately, the deceased was shifted to Akshaya Emergency Hospital, Rajahmundry, where he succumbed to injuries on 07.01.2001.

4. The 1st respondent remained ex parte. The 2nd respondent filed written statement denying the averments made in the petition

and contending that a false case is foisted against the 1st respondent.

5. Basing on the above pleadings, the Tribunal framed the following issues:

- “1) Whether the deceased Mygopula Kondayya died in motor accident occurred on 06.10.2001 while he was proceeding on his cycle on Godavari bund road at Chidipi Village of Kovvuru Mandal and when he reached near the turning in between Sivalayam and Jodi Chintalu at Chidipi outskirts, the 1st respondent driving APSRTC bus bearing No.AP 11 Z 913 in a rash and negligent manner dashed the deceased from back side?
- 2) Whether the petitioners being the dependents of the deceased Mygopula Kondayya, are entitled to claim compensation of Rs.3,70,000/- with interest thereon at 12%?
- 3) To what relief?”

6. On behalf of the claimants, the 1st claimant herself examined as P.W.1 besides examining P.W.2 and got marked Exs.A.1 to A.5. On behalf of the respondents, R.W.1 was examined, but no documents were marked.

7. The Tribunal, based on the evidence of P.W.2 and Ex.A.1, A.2 and A.5, came to the conclusion that the accident had occurred due to rash and negligent driving of driver of offending vehicle and accordingly, granted compensation of Rs.2,45,000/- . Challenging the same, the present appeal is filed by the APSRTC.

8. Learned counsel for the appellant would contend that the respondents-claimants foisted a false case against the appellants

and driver of the offending vehicle. There is no eye witness to the occurrence of the accident. P.W.2 is not an eye witness and he was never present at the alleged scene of accident. The Tribunal gravely erred in holding that the offending vehicle of the appellants is involved in the accident, based on the evidence of PW.2, who is not an eye witness to the alleged accident. He would further contend that the Tribunal has not considered the evidence of R.W.1-driver of the offending vehicle. The compensation ordered is excessive. He also contended that the Tribunal erred in applying the multiplier of '15' by fixing the age of the deceased as 40 years.

9. Per contra, learned counsel for the respondents would contend that the Tribunal has rightly held that the driver of the offending vehicle caused accident by driving the bus in a rash and negligent manner and in the said accident the deceased received injuries and died in the hospital on 07.10.2001. The Tribunal has rightly taken the notional income of the deceased as Rs.2,000/- per month and granted compensation of Rs.2,58,000/- with proportionate costs and interest @ 6% per annum. The Tribunal has not committed any error or illegality in granting compensation and hence seeks dismissal of the appeal.

10. In the facts and circumstances of the case, this Court found that based on the evidence of P.W.2 and documentary evidence under Exs.A.1, A.2 and A.5, the Tribunal has rightly held that the driver of the offending vehicle belonging to the appellant drove the offending vehicle in a rash and negligent manner and dashed

against the cycle of the deceased and caused accident on 06.10.2001. Immediately, he was taken to hospital where he succumbed to injuries on 07.10.2001. The Tribunal also rightly considered the age of the deceased as '40' years as per the Post-Mortem report and applied the multiplier '15' and granted a sum of Rs.2,40,000/- towards loss of expectancy, loss of estate and love and affection. Further, the Tribunal has awarded Rs.2,000/- towards funeral expenses, Rs.1,000/- towards medical expenses and Rs.5,000/- towards loss of consortium. In fact, the Tribunal has granted very less amounts under conventional heads. However, in the absence of any Cross Appeal by the respondents-claimants, this Court is of the view that the award and decree passed by the Tribunal warrants no interference of this Court.

11. Hence, the appeal is dismissed confirming the award and decree dated 28.01.2005 passed by the Chairman, Motor Accident Claims Tribunal (District Judge), East Goadavari at Rajahmundry. The appellants shall deposit the entire compensation amount to the credit of the O.P., after giving credit to the amounts already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the respondents-claimants are entitled to withdraw their respective share amounts, as ordered by the Tribunal.

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

M.GANGA RAO, J

OCTOBER 26, 2018
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Date:26.10.2018

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