

HON'BLE SRI JUSTICE T. AMARNATH GOUD

MA.CMA.NO: 3 4 3 7 OF 2011

J U D G M E N T :

This appeal arising out of the award and decree dated 04/04/2009 passed in O.P.No. 901 of 2008 by the V-Additional Metropolitan Sessions Judge [Mahila Court)-cum-XIX-Additional Chief Judge, City Criminal Courts, Hyderabad, [for short “ *The Tribunal*”).

2. The brief facts of the case are that on 01/07/2007 at about 03:00 p.m., while the deceased was going on a “*Suzuki Motor Cycle*” bearing No. *AP-10-B-2149* along with another person from Gandhi Nagar towards Ammuguda, an APSRTC bus bearing No. *AP-9-Z-4476* of Cantonment Depot, Secunderabad, came in opposite direction in a rash and negligent manner from opposite direction and dashed against the Yamaha motor cycle bearing No. *AP-10-B-2149* on which the deceased was a pillion rider and also another “Yamaha Motor Cycle” bearing No. *AP-28-L-2861*. In the accident, the deceased Kirthi Selan and another died on the spot and others received injuries. The motor cycle was completely damaged. The appellants-claimants filed the claim-petition claiming compensation of Rs.5,00,000=00 against respondents 1 and 2, namely; the A.P.S.R.T.C.

3. Before the Tribunal, the respondents 1 and 2 have filed a common counter denying the averments of the claim-petition and

averred that there was no negligence on the part of the driver of the APSRTC bus and prayed to dismiss the claim-petition.

4. On the basis of the pleadings, the Tribunal framed the following issues for trial:

- i) *Whether the death of the deceased, J.Kirtha Seelan on 01/7/2007 at about 03:00 p.m. is due to the rash and negligence driving of APSRTC bus bearing No. AP-9Z-4476 by its driver?*
- ii) *Whether the petitioners are entitled for compensation, if so, to what amount and from whom?*
- iii) *To what relief?*

5. To substantiate the claim, the appellants-claimants examined PWs-1 and 2 and Exs.A-1 to A-9 were marked on their behalf. No oral and documentary evidence was let-in by the respondents-APSRTC.

6. On appreciation of oral and documentary evidence placed on record, the Tribunal has applied the multiplier '15' by taking into consideration the age of the mother of the deceased, Rs.4,000/- was taken as the future neutralized income of the deceased and out of which 1/3rd was deducted towards loss of future income of the appellants-claimants and arrived at Rs.15,996/- as the annual loss of dependency. Hence, the multiplier relevant for the age of the mother of deceased as per the second schedule of the Motor Vehicles Act is 15 and determined the compensation, viz., $\text{Rs.15,996/-} \times 15 = 2,39,94=00$ and that apart Rs.5,000/- was awarded to each of the appellant-claimant under the head of loss of love and affection. The Tribunal awarded total

compensation of Rs.2,60,000=00 together with proportionate costs and subsequent interest @ 7% per annum from the date of filing of claim-petition till its realization, holding the respondents 1 and 2 jointly and severally liable to pay the compensation within one month.

7. Aggrieved by the award and decree, the APSRTC, preferred this appeal and contended that the Tribunal erred in coming to the conclusion that the accident was due to the rash and negligent driving of the driver of the bus and the Tribunal ought to have held that the deceased too was equally responsible for the accident, as there was collision between two vehicles coming in the opposite direction. The Tribunal ought to have applied the principle of '*Res ipsa loquitor*' and the claim petition was bad for non-joinder of owner and Insurance Company of the motor cycle involved in the accident. Further it is contended that the Tribunal wrongly assessed the income of the deceased as Rs.4,000/- per month but admittedly the deceased was not earning person, as he was a student studying B.Sc. Lastly it is the contention of the appellant-APSRTC that the Tribunal ought to have awarded the compensation as per Schedule-II of the Motor Vehicles Act and fixed the income of the deceased at Rs.15,000/- per annum for determination of compensation and the claim has to be dismissed.

8. Heard Sri N. Vasudeva Reddy, learned Standing Counsel for the Appellant-APSRTC and Sri P.Ramakrishna Reddy, learned counsel for the respondents-claimants.

9. Before the Tribunal, PW-2 N.Vikas, who was an eye-witness to the accident, was examined by the appellants-claimants to speak about the manner of accident. According to the evidence of PW-2, he deposed that on 01/7/2007, he was riding a Yamaha Motor cycle along with the deceased, while his brother Mahender, the deceased in another case was riding the motor cycle and one K.Srinivas was the pillion rider. While they were going on the Yamaha Motor Cycle bearing No.AP-10-B-2149 and by the time when they reached Railway Flyover bridge, Cavalry Barracks, Bollaram, one APSRTC bus bearing No. AP-9Z-4476 of Cantonment Depot came in a rash and negligent manner and dashed against their motor cycle and thereby the deceased, Mr.J. Kirthi Selan, succumbed to the injuries on the spot and others sustained injuries. In the cross-examination, PW-2 did not elicit anything to the contentions of the respondents made in the counter and to say that the accident occurred other wise because of the negligence of the driver of the APSRTC bus. Apart from that, PW-2 was an eye-witness to the accident and his testimony reveals that he was driving Yamaha motor cycle bearing No.AP-10-B-2149 and Kirthi Selan was the pillion rider and in another Suzuki motor cycle bearing No.AP-28-L-2861 his brother, Mahender was riding the Suzuki motor cycle and the deceased Srinivas was the pillion rider from Gandhi Nagar towards Ammuguda. Exs.A-1 and A-2 are the certified copies of FIR and charge sheet goes to show that the accident occurred due to the rash and negligent driving of the

driver of APSRTC. The respondents did not adduce any rebuttal evidence for the evidence adduced by the appellants-claimants. The Tribunal, therefore, observed that nothing was elicited in the cross-examination of PW-2 for consideration, therefore, the question of contributory negligence does not arise in this case and the Tribunal has rightly held that the deceased died due to the rash and negligent driving of APSRTC bus bearing No. AP-9Z-4476 of Cantonment Depot. In the considered opinion of this Court, the award of the Tribunal is well considered and needs no interference.

10. The appeal is dismissed in limini. In the circumstances, there shall be no order as to costs.

11. As a sequel, miscellaneous applications if any, pending in this appeal shall stand closed.


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[R E S U L T :: APPEAL IS DISMISSED]

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