

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.Nos.825 OF 2010 AND 369 OF 2014

COMMON JUDGMENT:

M.A.C.M.A.No.825 of 2010 is filed by the appellants/claimants and M.A.C.M.A.No.369 of 2014 is filed by the RTC, challenging the judgment dated 05.03.2010 passed in M.V.O.P.No.329 of 2005, by the Motor Accident Claims Tribunal-cum-VIII Additional District Judge (FTC), Chittoor (for short, the Tribunal).

2. Since both the appeals arise out of a common accident, they are being disposed of by this common judgment.

3. The brief facts of the case are that on 16.02.2005 at about 6.45 PM., while the second appellant was taking his daughter Bhavya (herein after referred to as the deceased) on his motor cycle bearing No.AP03K 9894 on the extreme left side of the road and proceeding near Penumur Cross road, the driver of the RTC bus bearing No.AP03U 4177, drove the same in a rash and negligent manner at high speed and dashed against the motorcycle, due to which, the deceased fell on the right side of the road and received severe injuries on her head and other parts of the body. Immediately, the deceased was shifted to Government Head Quarters Hospital, Chittoor, and later shifted to C.M.C. Hospital, Vellore and died in the said hospital on 17.02.2005. The claimants filed the above MVOP claiming compensation of Rs.5,00,000/- for the death of the deceased.

3. Respondents 1 and 2 in the claim petition filed a written statement, denying the allegations in the petition and contended that RTC is not liable to pay any compensation.

4. The third respondent who is owner of the bus filed a memo stating that the bus was hired to RTC., and that the accident occurred while it was on hire with RTC. He executed an indemnity bond in favour of RTC, undertaking to indemnify RTC., for the liability arising out of the accident.

5. The fourth respondent/insurance company filed a written statement denying the averments in the claim petition and contended that the accident occurred due to the negligent driving of the motorcycle. The bus belonging to 3rd respondent was hired to RTC and that the accident occurred during the hire period, therefore, the RTC alone is vicariously liable for the acts of its driver and liable to pay the compensation. The amount claimed by the appellants is highly excessive and that the appellants are not entitled for any amount from this respondent and prayed to dismiss the claim petition.

6. After considering the evidence produced by the parties, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the bus and awarded an amount of Rs.2,40,000/- payable by RTC with interest at the rate of 7.5% per annum from the date of petition till the date of realization. Dissatisfied with the said judgment, the present appeals were filed.

6. Since the deceased is a minor girl student, the Tribunal has fixed notional income of the deceased at Rs.15,000/- in the light of

the judgment in **New India Assurance Co.Ltd., V. Kalpana (Smt)**¹ and deducted 1/3 of the same towards her personal expenses and adopted the multiplier at 15.

7. If the age of the deceased is taken into consideration as per the ratio laid down by the Hon'ble Supreme Court in **Smt.Sarla Varma v Delhi Transport Corporation**², the income of the deceased can be arrived at Rs.3,000/- per month. After deducting 50% towards her personal expenses, as she was a bachelor, the annual income would be Rs.18,000/- per year. Hence, the compensation comes to Rs.2,70,000/- (Rs.18,000/- x 15). Regarding the other conventional heads, in the light of the judgment of the Apex Court in **National Insurance Co. Ltd. Vs. Pranay Sethi**³, the appellants are entitled to Rs.30,000/-, since the deceased died unmarried.

8. Insofar as payment of compensation is concerned, the bus was hired to RTC and the accident occurred during the hire period. In the similar circumstances, in **KARNATKA SRTC V. NEW INDIA ASSURANCE COMPANY LIMITED**⁴, the Apex Court held that the registered owner, insurer as well as KSRTC would be liable to make the payment of compensation jointly and severally to the claimants and KSRTC in terms of the lease agreement entered into with the registered owner and that it would be entitled to recover the amount paid to the claimants from the owner as stipulated in the agreement or from the insurer. In the light of the above judgment, owner, hirer and insurer of the bus are liable to make good the loss

¹ 2008 ACJ 1149.

² 2009(6) SCC 121

³ 2017(6) ALD 170 (SC)

⁴ (2016) 2 Supreme Court Cases 382

caused to the claimants. Therefore, the owner, insurer and the RTC are jointly and severally liable to pay the compensation to the claimants.

9. Accordingly Motor Accident Civil Miscellaneous Appeals are allowed in part. The award passed by the Tribunal, insofar as other heads are concerned, remains unchanged. Miscellaneous petitions pending if any shall stand closed. No order as to costs.

T.AMARNATH GOUD, J

Date: 30-11-2018.

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