

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.980 OF 2015

JUDGMENT:

This appeal is arising out of the Award and Decree dated 20.02.2015 passed in M.V.O.P.No.810 of 2012 by the Motor Vehicles Accidents Claims Tribunal-cum-III Additional District Judge, Guntur.

2. The brief facts of the case are as follows:

On 11.03.2012 at 10.30 a.m. one Ravella Bhaskar Rao along with N. Narasimharao (the deceased and P.W.2) were proceeding on motor cycle from Guntur to Amaravathi, when they reached Baji Baba Darga near Nidumukkala, the bus bearing No.AP 28 Z 1463 driven by its driver in a rash and negligent manner, came in opposite direction hit the motor cycle, resulting which, both the deceased and P.W.2 fell down from the motor cycle and sustained injuries. Immediately, they were shifted to Government General Hospital, Guntur, where the doctors declared the deceased as dead. Basing on the report given by P.W.2, a case in Crime No.36 of 2012 was registered against the driver of the bus. At the time of accident, the deceased was aged about 36 years, doing civil contracts besides cotton business and was earning Rs.3,20,000/-. The petitioners 1 to 3 are the wife and children, petitioner No.4 is the mother of the deceased. Due to his sudden demise, all the petitioners have lost their bread-winner, support, love and affection. Hence, they filed the claim petition claiming compensation of Rs.38,00,000/- against the respondent corporation.

3. Respondent, owner of the bus bearing No.AP 28 Z 1463 filed written statement denying all the averments made in the petition *inter alia* contending that the accident was occurred only due to the rash and negligent driving of the deceased in a confusing state of mind as he did not observe the vehicle coming in the opposite direction. It is further contended that there is no rash and negligent driving on the part of the driver of the bus and prayed to dismiss the petition.

4. Basing on the above pleadings, the trial Court framed the following issues:

1. Whether the death of Ravella Bhaskara Rao was caused due to rash and negligent act of the driver of APSRTC bus, bearing No.AP 28 Z 1463?
2. Whether the petitioners are entitled to compensation, and if so, to what amount and against whom?
3. To what relief?

5. In support of their claim, the petitioners examined P.Ws.1 to 6 and marked Exs.A1 to A24 and X1 to X9. On behalf of the respondent-corporation, R.W.1 was examined and Exs.B1 to B2 were marked.

6. After considering the evidence produced by the parties, the Tribunal granted a total sum of Rs.37,72,501.25ps, i.e. Rs.34,97,501.25ps towards loss of dependency, Rs.25,000/- towards funeral expenses, Rs.50,000/- towards loss of estate, Rs.1,00,000/- towards love and affection and Rs.1,00,000/- towards loss of consortium to petitioner No.1. It is held by the Tribunal in issue No.1 that the deceased has also contributed to the accident, the percentage of his contributory negligence in the accident is assessed at 50%, therefore, 50% out of the compensation assessed is of Rs.18,86,250.62ps.

7. Heard.

8. The only issue involved in this appeal as contended by Mr.B.Parameswara Rao, learned counsel for the appellant is only the contributory negligence. The compensation awarded by the Court tribunal at Rs.34,97,501.25ps has been shared at 50% and accordingly, an amount of Rs.18,86,250.62ps has been awarded. The issue of contributory negligence was considered by the Tribunal basing on the evidence of R.W.1, the driver of the RTC bus, who has been charge sheeted vide Ex.A2. As per the evidence of P.W.2, it is clear that they were proceeding on the left side of the road from Guntur to Amaravathi and the accident has taken place due to it, the deceased died. The Tribunal has relied on Ex.B2 rough sketch, which shows that the deceased and the motor cycle were on the right side of the road. It cannot be relied once the accident took place, the positioning of vehicle and also fall of human body due to the accident will not be at one particular position.

9. Having regard to the facts and circumstances of the case, the appeal is allowed and the compensation amount awarded at Rs.34,97,501.25ps is confirmed and the issue of contributory negligence is negatived. The other issues of the award passed by the tribunal are not disturbed. Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 06.12.2018
Rns