

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.2435 OF 2005

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the appellant-APSRTC aggrieved by the order dated 08.09.2004 in O.P.No.110 of 2002 on the file of the Motor Accident Claims Tribunal-cum-XI Additional Chief Judge, City Civil Court (Fast Track Court), Hyderabad (for short, 'the Tribunal').

2. Heard the learned counsel for the appellant-APSRTC, the learned counsel for the respondents-claimants and perused the record.

3. Learned counsel for the appellant-APSRTC would contend that the deceased was plying the auto at the time of accident in one way. There is evidence of P.W.2 to show that there was rashness and negligence on the part of the driver of the auto. Therefore, the Tribunal ought not to have fixed the liability against the APSRTC in toto. There is also contributory negligence on the part of the driver of the auto. The compensation could have been apportioned between the owner and insurer of both the vehicles.

4. Learned counsel for the respondents-claimants would contend that while dealing with the issue of rashness and negligence, the Tribunal held that only due to the rash and negligent driving of the driver of the APSRTC bus bearing No.AP 10Z 4602, the deceased Abdul Rasheed died on 26.11.2001. As per the criminal case record also, the driver of the offending bus was charge-sheeted under Section 304-A IPC. As per the evidence of P.W.2, the RTC bus bearing No.AP 10Z 4602 was plied at high speed at the time of occurrence of accident.

5. It is the evidence of R.W.1 that he noticed the auto from a distance of 70". Therefore, if he had applied sudden brakes, he could have stopped the vehicle 3" prior to the place of accident. It is also supported by the investigation conducted in the subject criminal case, where R.W.1 was charge-sheeted. Rashness consists of not only high speed but also not taking proper care and caution at the time of the accident. Negligence, on the other hand, is a breach of duty cast on a person in the circumstances of the given case or gross culpable neglect or failure to exercise due care in the circumstances of the case. The Tribunal rightly held that the accident occurred due to the rash and negligent driving of the driver of the RTC bus bearing No.AP 10Z 4602.

6. As far as the assessment and grant of compensation are concerned, the deceased was 36 years old as on the date of the accident. The Tribunal took his annual income as Rs.15,000/-, applied multiplier '13' and awarded compensation of Rs.1,30,000/- towards loss of dependency. The Tribunal also granted Rs.50,000/- towards customary amount, Rs.5,000/- towards loss of consortium, Rs.2,000/- towards loss of funeral expenses, Rs.2,500/- towards loss of estate and Rs.5,000/- towards pain and suffering. In all, the Tribunal granted compensation of Rs.1,94,500/- to the claimants. There are no circumstances to interfere with the impugned order. There is no infirmity in the findings of the Tribunal.

5. In the result, the appeal is dismissed.

The Miscellaneous Petitions, if any, pending shall stand closed.
No costs.

Dr. SHAMEEM AKTHER, J

Date: 19.07.2018
ssp