

HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.1142 of 2009

JUDGMENT:

This appeal is filed by the appellant-RTC aggrieved by the Order and Decree dated 04-07-2008 passed in O.P.No.503 of 2006 by the VII Additional District Judge at Mahabubnagar.

2. Brief facts of the case are that the deceased viz., Rathlavath Dasia, on 15-07-2006, while traveling in RTC bus from Hyderabad side to Thummidirekula side and when the bus reached at Shamshabad railway bridge, due to rash and negligent driving of the driver of the bus, he received head injury with iron pole and fell down and later he died after admitting him in Osmania Hospital. The claimants/respondent Nos.1 to 4, who are the wife, children and mother, respectively, filed the claim petition against the appellant-RTC claiming compensation of Rs.3.00 lakhs on the ground that the accident occurred due to the rash and negligent driving of the driver of the appellants.

3. Before the Tribunal, appellants filed counter denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

4. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the appellants and awarded total

compensation of Rs.2,11,500/- i.e., Rs.1,92,000/- (wrongly mentioned as Rs.1,68,000/-) towards loss of dependency, Rs.15,000/- towards loss of consortium, Rs.2,000/- towards funeral expenses and Rs.2,500/- towards loss of estate. Aggrieved by the same, the appellant-Corporation filed this appeal.

5. Heard.

6. Learned counsel for the appellants/RTC contends that the compensation awarded by the Tribunal is very excessive; and that though no evidence was let in by the respondents, the Tribunal notionally fixed the annual income of the deceased at Rs.18,000/- per annum, which is excessive; and that the deceased was traveling on the top of the bus in a negligent manner without the knowledge of the either of the driver or conductor and therefore, he prays to dismiss the appeal. Further, as seen from the award of compensation granted by the Tribunal, the computation of the Tribunal while granting compensation is not correct.

7. Learned counsel for the respondents/claimants contends that the award granted by the Tribunal is very just and proper and it cannot be interfered with.

8. As seen from the order of the Tribunal, it is clear that there are typographical mistakes viz., mentioning the multiplier as '17' instead of '16' and also in para-9 at page-4, the Tribunal mentioned an amount of Rs.1,68,000/- instead of Rs.1,92,000/- which was granted under the head of loss of dependency. However, finally, the Tribunal rightly mentioned the

total compensation as Rs.2,11,500/-. However, the appellant-RTC cannot take advantage of the typographical mistakes in the award passed by the Tribunal and seek to reduce the compensation

9. Further, in fact, the Tribunal did not grant any compensation to the claimants under conventional head to the wife of the claimant since as per the decision of the Supreme Court in **National Insurance Co. Ltd., Vs. Pranay Sethi¹**, the wife of the claimant is entitled for an amount of Rs.70,000/-. If the said amount is also added, the compensation comes to Rs.2,71,500/-. However, this appeal is filed by the Corporation and the claimants also did not file any cross objections, the compensation cannot be enhanced to that extent.

10. Be that as it may, the appellants-RTC filed this appeal alleging that the Tribunal took wrong multiplier. But however, as per the decision of the Supreme Court in **Smt. Sarla Varma Vs. Delhi Transport Corporation²**, for the age of 31 to 35 years, the correct multiplier is '16'. As stated supra, though the Tribunal has taken multiplier '16' but by mistake, it is typed as '17'. However, the Tribunal calculated the compensation with multiplier '16' rightly. The further contention of the appellants-RTC is that the accident occurred due to negligent act of the deceased. However, as seen from the oral evidence of PWs.1 and 2 and documentary evidence of Exs.A-1 to A-7, it is clear that the accident occurred due to the rash and negligent driving of the driver of the bus.

¹ 2017 (6) 170 (SC)

² (2009) 6 S.C.C. 121

Therefore, I am not inclined to interfere with the said finding. In the facts and circumstances of the case, I am of the opinion that the compensation awarded by the Tribunal is just and proper and it cannot be interfered with.

11. In the facts and circumstances of the case and considering the contentions raised by both the parties, I deem it appropriate to dispose of the appeal with the above observations.

12. Accordingly, the MACMA is disposed of. No costs.

13. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand disposed of.

JUSTICE T.AMARNATH GOUD

Date: 16-07-2019
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