

HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.No.1304 of 2012

JUDGMENT:

Appellant-Andhra Pradesh State Road Transport Corporation (APSRTC) filed this appeal against the award and decree dated 27-10-2010 passed in M.A.T.O.P.No.1368 of 2009 of the Motor Accidents Claims Tribunal-cum-III Additional District Judge, (FTC), Khammam, granting full compensation of Rs.3,50,000/- to the claimants/respondent Nos.1 and 2, payable by the appellant, for the death of the deceased-K.Narasimha Chary.

2. Respondents 1 and 2, who are the claimants-mother and sister of the deceased, respectively, filed claim petition under Section 166 read with Section 475 of Motor Vehicle Act, 1988, alleging that on 29-11-2007, when the deceased, along with one Venkata Satyanarayana Chary were proceeding towards Reddygudem for attending work and when they reached near IOC Petrol Bunk, Thallada, at about 2100 hours, 3rd respondent-driver of RTC Bus bearing Regn. No.AP 11Z 2575 came in opposite direction with a high speed in a rash and negligent manner and dashed against their vehicle, and as a result of which, they sustained grievous injuries on head and died on the spot. Thus, the claimants claimed compensation of Rs.3,50,000/- on account of death of the deceased, payable by the appellant and 3rd respondent jointly and severally.

3. The appellant-APSRTC filed counter denying the age and earnings of the deceased, manner of accident and death of the deceased due to injuries. The accident was occurred only due to the gross negligence on the part of the deceased in driving the vehicle. Therefore, it is not liable to pay any compensation to the claimants and prayed to dismiss the claim petition.

4. The Tribunal, based on the evidence available before it, held that the accident occurred due to the rash and negligent driving of driver of the bus hired by the appellant-APSRTC. It further held that the appellant and also the 3rd respondent are jointly and severally liable to pay compensation of Rs.3,50,000/- to the claimants.

5. Aggrieved by the said finding, the present appeal came to be filed by the appellant-APSRTC.

6. Heard.

7. Learned counsel for the appellant-APSRTC would contend that the Tribunal erroneously rejected the evidence of R.W.1 and that the issue of non-joinder of owner and insurer of the vehicle has not been framed. In so far as negligence is concerned, it relied upon the FIR and charge sheet only and came to the conclusion that the accident occurred due to negligence of the driver of the bus and granted compensation as claimed by the claimants. Therefore, the appeal may be allowed setting aside the order of the Tribunal.

8. Learned counsel for the respondent Nos.1 and 2 contends that the Tribunal has rightly granted compensation by applying correct multiplier of '18' applicable for the age of 22 years and for annual income is Rs.59,760/-, it comes to Rs.10,75,680/- (59,760X18). Further, it deducted 1/3rd of his income from his annual income of Rs.10,75,680/-. Then it comes to Rs.7,17,300/- (10,75,860 (-) 3,58,560/-). It also granted Rs.5,000/- towards loss of estate, love and affection and funeral expenses. Finally, it comes to Rs.7,22,300/-. However, restricted the compensation to Rs.3,50,000/- as claimed by the claimants. Hence, the appeal may be dismissed.

9. In the facts and circumstances of the case, the finding of the Tribunal in holding that the appellant-APSRTC is liable to pay compensation, cannot be found fault with as the 3rd respondent is only the driver of the Bus under the control of the appellant-Corporation. With regard to the entitlement to claim compensation of Rs.3,50,000/- is concerned, the Tribunal has considered the earnings of the deceased at Rs.166/- per day as the deceased was a carpenter and applied correct multiplier of '18' following the judgments of the Apex Court in **Sarla Varma Vs. Delhi Transport Corporation**¹ and **Nagappa and Gurudayal Singh and others**² and finally calculated the compensation at Rs.7,22,300/-, but however, since the claim itself was Rs.3,50,000/-, it has restricted the amount to Rs.3,50,000/-. Further, the Tribunal has taken as basis the daily income of the Carpenter as

¹ (2009) 6 S.C.C. 121

² (2003) 2 S.C.C. 274

Rs.166/- per day for computing the said compensation which is quite reasonable and requires no interference.

10. Therefore, I do not find any irregularity or illegality in the findings of the Tribunal. Accordingly, the appeal is dismissed confirming the decree and judgment of the Tribunal. There shall be no order as to costs.

11. Miscellaneous petitions pending in this appeal, if any, shall stand closed.

JUSTICE T.AMARNATH GOUD

05.07.2019
KVR

