

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.2200 OF 2018

JUDGMENT:

This appeal is preferred by the appellant/insurance company of the RTC bus, questioning the Award and Decree of the Motor Accident Claims Tribunal-cum-Principal District Judge, Karimnagar (for short, the Tribunal) in M.V.O.P.No.313 of 2016 dated 01.03.2018.

2. The brief facts of the case are that respondent No.1 is the mother, respondent No.2 is the father and respondent No.6 is the husband of the deceased Bura Bhargavi @ Veldandi Vani. Respondent No.3 is the driver, respondent No.4 is the owner and respondent No.5-RTC is the hirer of the bus bearing No.AP23U 6776. On 09.12.2011, the deceased boarded the above bus at Palakula village in order to go to Basvapur. On the way, at about 8.45 A.M., when the bus reached Basvapur bus stage and while the deceased was getting down from the bus, the driver moved the said bus in a negligent manner, due to which, the deceased fell down on the road and sustained injuries to her head, right hand and other parts of the body and she succumbed to the injuries on 06.01.2012 while undergoing treatment. Respondent Nos.1 and 2 filed the aforesaid OP against the respondents 3 to 6 and also the appellant herein, claiming compensation of Rs.8,00,000/- for the death of the deceased.

3. Before the Tribunal, respondent Nos.1, 2 and 5 in the above OP., remained ex parte. The appellant-insurance company and respondent-RTC filed their separate counters denying the allegations and contended that the amount claimed is highly

excessive and that they are not liable to pay any compensation 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 RTC bus and awarded total compensation of 3,04,000/- under various heads for the death of the deceased. The Tribunal directed to deduct Rs.2,15,000/- awarded to the husband of the deceased (respondent No.6 herein) in O.P.No.427 of 2012 on the file of XXVII Additional Chief Judge, City Civil Court, Secunderabad. The Tribunal also directed that the amount of Rs.74,170/- medical expenses, Rs.25,000/- funeral expenses and Rs.10,000/- transportation charges, totaling Rs.1,09,170/- awarded to the husband of the deceased in the above OP., shall be paid to the respondent Nos.1 and 2 herein (i.e., parents of the deceased). Thus, the Tribunal directed to pay the remaining amount of Rs.1,98,170/- with interest at the rate of 7.5% per annum from the date of filing of the original petition, till the date of realization and also held that the driver, owner and insurer of the bus i.e., respondent Nos.3, 4 and the appellant herein, are jointly and severally liable to pay the compensation. Challenging the said order, the appellant-insurance company filed the present appeal.

5. Heard.

6. Sri T.Mahender Rao, learned standing counsel appearing for the appellant-insurance company, submitted that though the XXVII Additional Chief Judge, City Civil Court, Secunderabad in O.P.No.427 of 2012 awarded compensation of

Rs.2,15,000/- to the husband of the deceased fastening the liability on the RTC, the Tribunal herein erroneously dismissed the claim against the RTC and directed respondents 3, 4 and the appellant herein to pay the compensation jointly and severally. He further submitted that the Tribunal erroneously deducted 1/3rd instead of 50% from the income of the deceased towards personal expenditure. He further submitted that respondent Nos.1 and 2, who are the parents of the deceased, are not the legal representatives of the deceased and that the compensation awarded by the Tribunal is excessive and prayed to allow the appeal filed by the insurance company, holding that the claimants are not entitled for the compensation of Rs.1,98,170/-.

7. Sri A.Manohar Reddy, learned counsel appearing for the respondent Nos. 1 and 2, submitted that respondent Nos.1 and 2, being the parents, are the legal representatives of the deceased and therefore, they are entitled for the compensation like the parents of the deceased son. In support of his contention, he relied on the decisions reported in **Smt.Ganny Kaur V. The State (NCT) and others¹** and **Gujarat State Road Transport Corporation, Ahmedabad V. Ramanghai Prabhatbhai²**. He further submitted that the Tribunal has awarded meager compensation and prayed to enhance the same.

8. It is contended on behalf of the appellant-insurance company that the parents are not the legal representatives of the deceased.

¹ AIR 2007 Delhi 273

² 1987 (3) SCC 234

But, there is no evidence let in on its behalf to show that the parents of the deceased are not the legal representatives. On the other hand, the learned counsel appearing for respondent Nos.1 and 2 submitted that the marriage of the deceased took place one month prior to the date of accident and thereafter, the husband of the deceased married again. In **Smt.Ganny Kaur's** case (supra), the learned Single Judge of Delhi High Court held:

“[Section 1A](#) of the Indian Fatal Accidents Act, 1855 provides that a suit can be brought for compensation by the family of a person for loss occasioned to the family by the death on account of an actionable wrong. The said section provides specifically that every such action or suit shall be for the benefit of the "wife, husband, parent and child, if any, of the person whose death shall have been so caused." It is further provided in the said [Section 1A](#) that in every such action, the court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought. It is further provided that the amount so recovered, after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the parties for whose benefit the suit was brought in such shares as the court by its judgment or decree shall direct. By virtue of this provision, the parents of a woman as well as the parents of a man would be entitled to compensation. It is also clear that if there were more than one person entitled to damages, then the same would have to be apportioned by the court as per its judgment or decree. Significantly, it has not been indicated that the personal law would apply. The apportionment has been left to the court which, in any event, when no specific direction is given by a statute, has to decide according to justice, equity and good conscience. The manner of paying the compensation to the persons who are entitled to receive compensation under [Section 357](#) of the Code of Criminal Procedure, 1973 in respect of offences resulting in death is the same as provided under the [Indian Fatal Accidents Act, 1855.](#)”

In view of the above, I am of the opinion that respondent Nos.1 and 2, being the parents of the deceased woman, are entitled to receive

the compensation along with respondent No.6-husband of the deceased.

9. The learned counsel for the appellant further submitted that the vehicle involved in the accident was hired to the RTC and therefore, RTC is liable to pay the compensation. Though, the bus was hired to RTC, the owner of the bus has obtained insurance policy in respect of the bus and the said policy is in force on the date of accident. In **APSRTC, represented by its Divisional Manager, Eluru V. Kanche Nagabhushanam³**, the learned Single Judge of this Court held that *“even if there is any agreement between owner of vehicle and hirer shifting the indemnification on hirer, the privity of contract between original owner and insurer by way of insurance policy does not cease and that so long as the policy is in force covering certain risks, notwithstanding the possession of vehicle, liability of insurer does not cease to the extent of its liability against third parties as postulated under Section 157 of Motor Vehicles Act.”* Therefore, I am of the opinion that the insurance company is liable to pay the compensation to the claimants.

10. Insofar as the arriving of compensation is concerned, the Tribunal has awarded excessive compensation by taking into consideration the oral and documentary evidence available on record. In view of the same, respondent Nos.1 and 2, being the parents of the deceased, are only entitled to Rs.80,000/- (Rs.40,000/-each) towards filial consortium as per the decision in **Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru**

³ 2007 (6) ALT 627

Ram & Others⁴. Except the above modification, the order passed by the Tribunal remains unchanged in all respects.

11. Accordingly, the Motor Accident Civil Miscellaneous Appeal is partly allowed. Miscellaneous petitions pending, if any, shall stand dismissed. No order as to costs.

T.AMARNATH GOUD, J

Date:04-09-2019
Shr



⁴ 2018 Law Suit (SC) 904