

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.979 of 2018
and
C.M.P.No.7951 of 2018

The Vice Chairman and Managing Director,
Andhra Pradesh State Road Transport Corporation
Limited,
Hyderabad, Andhra Pradesh

.. Appellant

Vs.

1.Nagamma
2.Rajamani
3.Parvathy
4.Minor. Logesh
5.Minor. Soniya

.. Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 21.04.2017 passed by His Hon'ble the Special Subordinate Judge, Motor Accidents Claims Tribunal, Tirupattur in M.C.O.P.No.75/2013.

For Appellant : M/s.G.V.Shoba
For Respondents : Mr. PA.Sudeshkumar
For M/s.Sun Associates

J U D G M E N T

The Andhra Pradesh State Road Transport Limited is the appellant challenging the judgment and decree dated 21.04.2017 passed in M.C.O.P. No. 75 of 2013.

2. The appeal is filed mainly on the ground that the Tribunal has not considered the driver of the appellant / Transport Corporation was not solely responsible for the accident and the said findings of the Tribunal is not based on the evidence and facts. The Tribunal has erroneously considered the evidence of PW1 and PW2 and Exhibit P1, FIR and passed the award. The negligence committed by the respondents has not been considered by the Tribunal and therefore, the judgment and

decree passed by the Tribunal is to be set aside. In the absence of any document to prove that the income of the Tribunal ought not to have been fixed a sum of Rs.6,500/- as monthly income for the purpose of calculating compensation. For all these reasons, the judgment is liable to be set aside.

3. The facts set out in the claim petition in brief as that :-

(1) The deceased was aged about 40 years and was hale and healthy at the time of accident. He was skilled labour in Granite Quarry. He was earning about Rs.9,000/- per month. He was contributing Rs.7,000/- to the family per month. The first petitioner is the wife and 2 to 5 petitioners are children of the deceased.

(2) On 09.07.2012 at 02.30 a.m., on Madanapalle to Tirupati main Road, near Thattivaripalle bypass, Madanapalle Mandal, a APSRTC bus bearing registration No. AP-29-Z-2049 belonging to the respondent driven by its driver in a very rash and negligent manner in the course of his employment under the respondent going towards Madanapalle, without taking due care and caution and dashed against the front going Auto bearing Registration No. AP-03-Y-1689. As a result the auto capsized on the road, deceased Muneppa and other passengers of the auto sustained bleeding injuries. Due to the impact Muneppa was immediately taken to the Government Area Hospital, Madanapalle and then he was shifted to S.V. Medical College Hospital, Tirupathi. But the doctors gave all best treatment but could not save Muneppa and he died in the hospital on the same day. The postmortem was conducted on the body of the deceased Muneppa in the S.V. Medical College Hospital, Tirupathi.

(3) The respondent being the owner of the APSRTC bus bearing registration No. AP-29-Z-2049 is liable to pay compensation to the petitioners for the death of said Muneppa in the above said accident.

(4) The case under Sections 279, 337, 338 and 304 (A) of IPC is registered by the Madanapalle Taluk Police Station in Crime No. 115/2012 against the driver of the said bus bearing registration No. AP-29-Z-2049 and the same is pending before the Hon'ble II Additional Judicial Magistrate of I Class, Madanapalle. Since the accident took place only due to the rash and negligent driving of the said bus by its driver in the course of his employment under the respondent, the respondent being the owner of the said bus at the time of said accident is liable to pay compensation to the petitioners in the above said accident.

4. The facts set out in the counter affidavit in brief as that:-

(1) It is submitted that on 09.07.2012, when the respondent's driver was driving his bus bearing Registration No. AP-29-Z-2049, on the Tirupathi to Madanapalli route, at 02.30 a.m., proceeding towards Madanapalle, an auto bearing Registration No. AP-03-Y-1689 was going ahead of the bus. The bus driver tried to overtake the said auto. Hence, he applied horn asking for side from the auto driver. Auto driver also obliged his request and move his vehicle towards left side of the road. However, when the bus driver was overtaking the auto, all of a sudden, due to the overload of the auto, carrying 5 passengers instead of permitted 3 passengers, the auto driver lost his control over his auto and thus, suddenly entered into the road again towards right side as a result of which the auto driver hit the APSRTC bus, and his auto turned turtle, causing injuries to the passengers. One among the passengers was Muneppa, who died at SVRR, Govt. Hospital, Tirupathi, others traveled in it, who are sustained only simply injuries in the said accident.

(2) Therefore the accident had happened due to the rash and negligent driving of the auto driver only and not by APSRTC bus driver. Therefore, the auto insurer and owner are necessary parties to this petition. Further, at the time of accident, the said auto driver did not hold valid driving licence to drive his auto. Since he drove his vehicle without valid license, the bus driver is not responsible for this accident. Only the auto driver is liable to pay compensation to the petitioners and not the respondent as alleged in the petition.

5. The Tribunal in the common judgment adjudicated the issues with reference to the documents as well as the evidences produced. The Tribunal arrived a conclusion that the accident occurred due to the rash and negligent driving of the bus driver and the auto driver is not the cause for the accident. Accordingly, the liability was fixed on the appellant /Transport Corporation and held that the compensation is to be paid by the Transport Corporation. In this regard, the Tribunal adjudicated the evidences, more specifically, the first information report and the related documents. Regarding the quantum of compensation, the Tribunal has considered the age of the deceased as well as the income, which was fixed at Rs.6,500/- per month.

6. Perusal of the entire findings, this Court is of the considered opinion that there is no perversity and infirmity as such warranting an interference, more specifically, in the quantum of compensation awarded. The quantum of compensation awarded cannot be said to be exorbitant or unreasonable. The over all facts and circumstances with reference to the avocation of the deceased and the monthly income were taken into consideration by the Tribunal. This being the conclusion arrived, this Court do not find any infirmity so as to modify or interfere with the common judgment of the Tribunal. Accordingly, the common judgment and decree dated 21.04.2017 passed in M.C.O.P. No. 75 of 2013 is confirmed and C.M.A. No. 979 of 2018 stands dismissed. No costs.

7. The learned counsel for the appellant/ Transport Corporation made a submission that 50% of the award amount has already been deposited. The appellant is directed to deposit the balance award amount along with the interest @ 7.5% within a period of six weeks from the date of receipt of a copy of this judgment and on such deposit, the claimants are permitted to withdraw the same by filing an appropriate application and the payments should be made through RTGS.

s/d-
Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

may a

To

1. The Special Subordinate Judge,
Motor Accidents Claims Tribunal
Tirupattur.

2. The Section officer
VR Section
High Court, Madras 104.

+1 CC to Mr.G.V. Shoba, Advocate sr 23487
+1 CC to Mr.P.A. Sudesh Kumar, Advocate sr 23424.

C.M.A. No. 979 of 2018

RJI (CO)
SP(02/09/2020)