

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

M.A.C.M.A.No.1292 OF 2015

JUDGMENT: (Per Hon'ble Dr.SA,J)

This appeal, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellant/RTC aggrieved by the order and decree, dated 22.08.2014, passed in M.V.O.P.No.117 of 2013 by the learned XXVII Additional Chief Judge, City Civil Court, Secunderabad, whereby, an amount of Rs.27,14,017/- was granted as compensation to the respondents/claimants, as against the claim of Rs.28,00,000/-, for the death of one Krishna in a motor accident, which occurred on 16.12.2012 at about 10:40 PM on NH-44 near Sri Satya Sai Petrol Pump at Medchal, Ranga Reddy District.

2. Heard Sri Thoom Srinivas, learned Standing Counsel for the appellant/RTC and perused the record.

3. Notices sent to respondent Nos.1 and 4/claimant Nos.1 and 4 returned unserved with an endorsement "no such person in the address". Respondent Nos.2 and 3/claimants Nos.2 and 3 are minors represented by respondent No.1/claimant No.1.

4. Learned Standing Counsel appearing for the appellant/RTC would contend that without there being any acceptable evidence on record, the Court below was pleased to hold that there was rash and negligent driving on the part of the driver of the offending RTC bus bearing No.AP-28-Z-5698. The Court below did not take into consideration the negligence on the part of the deceased, who was negligent in crossing the road. The Court below erroneously took the income of the deceased at Rs.1,81,247/- per annum, without making any statutory deductions. The Court below ought not have granted compensation under non-pecuniary heads. The Court below erred in granting compensation at Rs.27,14,017/- with interest thereon. The compensation granted by the Court below is excessive and exorbitant, and ultimately, prayed to set aside the impugned order and decree.

5. In view of the above, the points that arise for determination in this appeal are as follows:

- “1. Whether there was rash and negligent driving on the part of the driver of the RTC bus or whether the deceased has contributed negligence?
2. Whether the Court below is justified in granting compensation at Rs.27,14,017/- to the respondents/ claimants?

3. Whether the impugned order and decree, dated 22.08.2014, passed in M.V.O.P.No.117 of 2013 by the learned XXVII Additional Chief Judge, City Civil Court, Secunderabad, are liable to be set aside?"

POINT No.1:

6. To substantiate their claim, the respondents/claimants got examined PWs.1 to 3 and got marked Exs.A1 to A21. On behalf of the appellant/RTC, RW.1 was examined, but no documents were marked. Ex.X1 to X3 were marked through PW.3.

7. As seen from the material placed on record, the respondents/claimants to prove rash and negligence on the part of the driver of the offending RTC bus, examined PW.2-Md.Nayeem, who is a direct witness to the subject accident, and got marked Ex.A4-certified copy of charge sheet. As per Ex.A4-charge sheet, PW.2 has stated that at the relevant time, he was standing near the Sathya Sai Petrol Pump and noticed the deceased proceeding on foot and at that time, the offending RTC bus coming from Nizamabad towards Hyderabad driven in a rash and negligent manner at high speed, dashed against the deceased causing multiple injuries resulting in the death of the deceased. Though RW.1-G. Ramesh, driver of the offending RTC bus, was examined on behalf of the appellant/RTC to prove that there was

negligence on the part of the deceased while crossing the road, there is no other evidence to substantiate the same. RW.1 is a highly interested person. It is unsafe to act upon his evidence. The Court below, having analyzed the entire oral and documentary evidence on record, held that the driver of the offending RTC bus bearing No.AP-28-Z-5698 drove the bus in a rash and negligent manner and caused the subject accident on 16.12.2012, resulting in the death of the deceased. The Court below is justified in recording such a finding. Accordingly, this point is answered against the appellant/RTC.

POINT Nos.2 and 3:

8. The Court below, while determining the income of the deceased, had placed reliance over the income tax returns of the deceased for the assessment years from 2005-2006 to 2012-2013 marked as Exs.A8 to A15 and also on the oral evidence adduced on behalf of the respondents/claimants i.e., PWs.1 & 3. The Court below, taking into consideration the oral and documentary evidence on record, took the annual income of the deceased at Rs.1,81,247/-. As per the evidence on record, the deceased was aged between 41 and 45 years. Hence, the Court below has taken multiplier '14' and the same cannot be faulted, in view of the decision rendered by the Honourable Supreme

Court in **Sarla Verma v. Delhi Transport Corporation**¹. Further, the Court below has added 30% to the actual income of the deceased towards future income. Since there are four dependents on the deceased, the Court below has deducted 1/4th of the annual income towards personal expenses of the deceased. Thus, the Court below has arrived the loss of earnings of the deceased at Rs.24,74,017/-. Further, in view of the judgment rendered by the Honourable Supreme Court in **Rajesh and others v. Rajbir Singh and others**², the Court below has granted Rs.1,00,000/- towards loss of consortium. Apart from that, the Court below also granted Rs.1,00,000/- towards loss of love and affection and guidance to the minors @ Rs.50,000/- each, Rs.10,000/- towards loss of estate, Rs.25,000/- towards funeral expenses and Rs.5,000/- towards transport charges. In total, the Court below has granted Rs.27,14,017/-. The Court below is justified in granting the said amount. Further, the Court below has granted interest at the rate of 7.5% per annum from the date of petition till realization, which is just and reasonable. Under these circumstances, the contentions raised on behalf of the appellant/RTC do not merit

¹ AIR 2009 SC 3104

² (2013) 9 SCC 54

consideration. The appeal is devoid of merit and is liable to be dismissed.

9. Accordingly, the appeal is dismissed confirming the order and decree, dated 22.08.2014, passed in M.V.O.P.No.117 of 2013 by the learned XXVII Additional Chief Judge, City Civil Court, Secunderabad.

Miscellaneous Petitions, if any, pending in this appeal, shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

NAGESH BHEEMAPAKA, J

Date: 17.11.2022
MD