

HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A. No. 4249 of 2014

JUDGMENT:

Being dissatisfied with the order and decree passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-IX Additional District and Sessions Judge, Kamareddy, in O.P.No. 314 of 2009 dated 12.01.2012, respondents 1 and 2, who are the Depot Manager and General Manager of Andhra Pradesh State Road Transport Corporation, have filed the present appeal.

2. For the sake of convenience, the parties have been referred to as arrayed before the Tribunal.

3. Brief facts of the petitioners' case are that on 8.10.2007 the deceased Venkata Narsimha Reddy was proceeding on his motorcycle bearing No. AP.15.D.1335 from Kamareddy to Nizamabad and when he reached the outskirts of Chandrayanpalli on National Highway No.7 i.e. the road leading to Dichpally, an A.P.S.R.T.C. bus bearing No. AP 28 Z 804 came in a rash and negligent manner with high speed on the wrong side of the road from the opposite direction and dashed against his motorcycle, as such, he received fracture injuries

on the head, hands, legs apart from injuries on the other parts of the body and died on the spot. According to the petitioners, the deceased was aged 43 years and used to earn Rs.11,000/- per month as a Record Assistant in Oriental High School, Kamareddy. Thus, the petitioners claimed compensation of Rs.12,00,000/- under various heads.

4. Respondents filed counter disputing the manner of accident, age, avocation and income of the deceased. It is further contended that the compensation claimed by the petitioners is highly excessive and prays to dismiss the petition.

5. Based on the above pleadings, the Tribunal framed the following issues:

1. Whether the accident has taken place due to rash and negligent driving of the APSRTC Bus bearing No. AP 28 Z 804 by its driver?
2. Whether the petitioners are entitled for compensation, if so, to what just amount and from whom?
3. To what relief?

6. In order to prove the issues, PWs.1 and 2 were examined and Exs.A1 to A6 got marked on behalf of the petitioners. On behalf of respondents 1 and 2, no oral or documentary evidence was produced.

7. Considering the oral and documentary evidence available on record, the Tribunal has awarded an amount of Rs.8,00,000/- towards compensation to the claimants against respondents 1 and 2 along with costs and interest @ 7.5% per annum from the date of petition till realization.

8. Heard the learned Standing Counsel for the appellants-Andhra Pradesh State Road Transport Corporation and the learned Counsel for the respondent Nos.1 to 4/claimants. Perused the material available on record.

9. The learned Standing Counsel for the appellants-Corporation contended that the accident occurred due to the rash and negligent driving of the motorcycle and not due to the rash and negligent driving of the RTC bus; that the Tribunal erred in relying Ex.A5 Last Pay Certificate of the deceased and the compensation awarded is

exorbitant. Accordingly, prayed for setting aside the impugned order in the O.P.

10. The learned Counsel appearing on behalf of respondent Nos.1 to 4-claimants submitted that the Tribunal after considering the oral and documentary evidence available on record, has awarded reasonable compensation and the same needs no interference by this Court. Therefore, the learned counsel sought for dismissal of the appeal.

11. Here it is pertinent to state that petitioner Nos.1 and 2 in O.P.No.73 of 2010 are the legally wedded wife and daughter of the deceased Venkata Narsimha Reddy and later the deceased married the petitioner No.1 in O.P.No.314 of 2009 and petitioner Nos.2 and 3 are their children and petitioner No.4 is mother of the deceased.

12. On the aspect of the status of second wife, whose claim to get the compensation was allowed by the tribunal, legal position in this regard has already been explained by this Court in **Kursam Sammakka and others v. A. Srinivas**¹, wherein considering similar issue, this Court has held that the second wife, being legal

¹ 2020 (5) ALD 171 (TS)

representative of the deceased, is entitled to get compensation.

Further, at para 9, this court has observed as under:-

“9. As per Section 163-A of the Act, insurer shall be liable to pay compensation in case of death or permanent disablement to the legal heirs or the victim, as the case may be. As per Section 166(1)(c) of the Act, an application for compensation arising out of an accident of the nature specified in sub-section (1) of Section 165 may be made where death has resulted from the accident, by all or any of the legal representatives of the deceased. Therefore, the legal representatives of the deceased are entitled for the compensation as per the above said provisions.”

13. In another case, this Court in **Minisetti Nageswaramma v. V. Ramaiah**², relying on the decision of the Apex Court in **Chanmuniya v. Virendra Kumar Singh Kushwaha**³, categorically held that even second wife is entitled for compensation. Therefore, the finding of the tribunal in awarding the compensation to the second wife from out of the compensation amount awarded by it is accepted. The tribunal passed common order in both the petitions. The present appeal is filed by the respondents in O.P.No.314 of 2009.

14. With regard to the manner of accident, though the learned Standing counsel for the Insurance Company pleaded that the accident occurred due to the rash and negligent driving of the motorcycle by the deceased, the tribunal after evaluating the evidence of PWs.1 and

² 2012 (2) ALD 329

³ 2011 (1) ALD (CrI.) 370 (SC)

2 coupled with the documentary evidence held that the accident occurred due to the rash and negligent driving of the driver of the RTC Bus and the deceased died due to the injuries sustained by him in the said accident.

15. With regard to the quantum of compensation is concerned, according to the petitioners, the deceased aged 43 years and earning Rs.11,000/- per month as a Record Assistant in the Oriental High School, Kamareddy. Considering the evidence of PW-1 coupled with Ex.A5 Last Pay Certificate of the deceased and Ex.A10 copy of Service Register of the deceased, the tribunal rightly came to the conclusion that the deceased was aged 42 years and was earning Rs.10,644/- per month and as such, by deducting $\frac{1}{3}$ rd of it towards his personal expenses and by applying multiplier as '15' calculated the compensation as Rs.12,77,280/-. Further the tribunal also awarded an amount of Rs.5,000/- towards transportation charges and Rs.1,000/- towards damages to clothing. However, since the petitioners made their claim for Rs.12,00,000/-, the tribunal rightly restricted the compensation for Rs.12,00,000/-. Out of which, an amount of

Rs.8,00,000/- is awarded to the petitioners in O.P.no.314 of 2009, which is just and reasonable.

16. With regard to the liability, as stated above, the accident occurred due to the rash and negligent driving of the RTC bus and therefore, respondents 1 and 2 are jointly and severally liable to pay the compensation. In view of the above discussion, this Court is of the opinion that there are no valid grounds to interfere with the cogent findings given by the Tribunal and the appeal is liable to be dismissed.

17. In the result, the M.A.C.M.A. is dismissed. There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

M.G.PRIYADARSINI,J

18.01.2023
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