

M. Rajamma and Others Vs. General Manager, Apsrtc, Hyd.

M. Rajamma and Others Vs. General Manager, Apsrtc, Hyd.

SooperKanoon Citation : sooperkanoon.com/437638

Court : Andhra Pradesh

Decided On : Feb-17-2000

Reported in : I(2001)ACC2; 2001ACJ1040; 2000(4)ALD231; 2000(4)ALT9

Judge : V. Eswaraiah, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 92-A and 168

Appeal No. : AAO No. 1068 of 1994

Appellant : M. Rajamma and Others

Respondent : General Manager, Apsrtc, Hyd.

Advocate for Def. : Mr. A.V. Sivaiah, Adv.

Advocate for Pet/Ap. : Mr. C.V. Nagarjuna Reddy, Adv.

Judgement :

1. The claimants filed this Civil Miscellaneous Appeal aggrieved by the order of the Motor Accidents Claims Tribunal-cum-Additional District Judge, Madanapalle in OP No.146 of 1987 dated 20-12-1988, insofar as it went against the contention of the appellants.

2. The Tribunal in the said order held that the deceased did not die due to the rash and negligent act of the driver or the conductor of the offending vehicle, and therefore, the claimants are entitled to a fixed sum of Rs.15,000/- alone as

compensation under no fault liability. Aggrieved by the said order, the claimants have filed this appeal contending that as per the evidence available on record, the finding of the Tribunal that the death of the deceased was not due to the rash and negligent driving of the driver of the vehicle is incorrect and unsustainable and the claimants are entitled for the compensation as claimed by them.

3. Brief facts of the case are as follows: That the appellants 1 and 2 are the wives of the deceased, 3rd appellant is the mother of the deceased and 4th and 5th appellants are minor daughters of the deceased. The deceased was a milk vendor and agriculturist and he died on 16-4-1987 due to the rash and negligent driving of the driver and for the negligent act of the conductor of APSRTC bus bearing No.AAZ6091 which resulted fall of an iron rod loaded on the top of the bus and hit the deceased while the deceased was standing by the side of the earthen road. The APSRTC is the respondent. Before the Tribunal, the respondent denied its liability to pay the compensation contending that there was no rash and negligent act on the part of its employee in causing the said accident, and therefore, the compensation if at all is payable was only Rs.15,000/- under Section 92-A of the Motor Vehicles Act for no fault liability. The deceased was about 35 years at the time of his death and the appellants claimed for the total compensation towards loss of contribution to the family and loss of earning, pain and suffering and the compensation for loss of earning power and in all respects they have claimed Rs.85,000/-.

4. The respondent filed a counter before the Tribunal stating that it is incorrect to state that the deceased was earning Rs.700/- per month on the milk business and Rs.3,000/- per year on the agriculture. It is stated that on 16-4-1987 bus bearing No.AAZ-6091 driven by Sri Md. Anif and conducted by Sri V.N. Reddy and while it was stationed at Pileru Bus Stand, one passenger loaded two iron plate type rods on the top of the bus and the conductor specifically directed the passenger to tie the same securely on the top of the bus, then the conductor also seen the rods were tied securely to the luggage carrier and while the bus was proceeding to Kalikiri road near Satyapuram, one of the rods slipped from the knot and fell down on one of the four passengers who were talking on the earthen road. The pedestrian on whom the rods had fallen down did not take care to have a

reasonable distance from the bus and because of the negligence of the deceased pedestrian and the unfortunate slipping of the rod, the accident caused and the deceased died. It is stated that immediately after the accident, the deceased was taken to the Government Hospital, Kalikiri in the same bus but since the doctor was not available in the hospital, the deceased was taken to a private hospital where the doctor declared that the deceased was dead.

5. The 1st appellant examined herself as PW1 and stated that appellants 1 and 2 are the wives of the deceased and they are own sisters and the 3rd appellant is the mother of the deceased. Appellants 4 and 5 are the daughters of the 2nd appellant and the name of the deceased was Chinna Rangaiah @ Rajesekhar and also called as Ranganna and he died in the accident. It is also stated that the police filed a case against APSRTC bus driver, conductor and the owner of the goods and the FIR, Post-Mortem report, Motor Vehicle Inspector's report, charge-sheet are marked as Ex.A1 to A4. She stated that the deceased was selling milk and he was also doing agriculture and they have one acre of land and cultivating 4 to 5 acres of land on taking lease and the deceased was saving an amount of Ks.1,000/- in the milk vending and Rs.3,000/- in the cultivation excluding all expenses per year. In the cross-examination it was suggested by the respondent that the deceased was working as a cooli on daily wages at the rate of Rs.10/- per day. One S. Yeswatnam was examined as PW2, who has stated that at the time of the accident he was talking with the deceased at the road site at Satyapuram while they were talking, APSRTC bus coming from east and going towards west which was driven very fast and the iron rod of the cart wheel fell down from top of the bus and hit the deceased's head and the deceased was taken to the hospital where he was declared dead. One K. Gouraih was examined as PW3 who has stated that he knows the deceased and the deceased and himself are the milk vendors and they maintained a book to this effect.

6. Sri V.N. Reddy, conductor of the offending bus was examined as RW1 and he stated that at Pileru when a passenger bound to Nayanapakala tried to load the cartwheel tyres bundles made up of iron ring on the top of the bus, he objected to the same but the passenger did not heed to him and he loaded the same on the top of the bus. Then the conductor asked the said passenger to tie the bundle to

the luggage carrier on the top safely and also he got up to the top and saw the bundles and found that it was tied safely to the luggage carrier. When the bus arrived at Satyapuram there existed a single tar road and 7 feet earthen road on either side and just before leaving Satyapuram four pedestrians were standing on the earthen road adjacent to the tar road and the pedestrians standing on the earthen road was visible to him and stated that the said persons did not move from the tar road and remained standing abutting the tar road and the deceased was standing close to the moving vehicle on the tar road and at that time an iron plate (cart wheel rim) fell from the top of the bus on the said person. After a short distance, the bus was stopped and took the deceased with injuries to the Government hospital and as the doctor was not available in the hospital, he was taken to a private hospital where he was declared dead.

7. A Criminal Case has been registered in CC No.112 of 1987. On the complaint, the First Information Report tiled by the Inspector of Police, Pileru on the same date of the accident. A charge-sheet is filed against the driver, conductor of APSRTC bus and one Dinnemeeda Kami Reddy, owner of the goods (cart wheel rim). Charge-sheet is marked as Ex.A4. In the charge-sheet it is stated that the accused A1 and A2 who were employed as driver and conductor in the APSRTC Bus Depot, Pileru in respect of bus bearing No.AAZ6091. On 16-4-1987 at about 5.30 a.m., the bus was halted at bus stand Pileru and A3 with the knowledge of A2 i.e., the conductor of the bus, loaded two iron plate type rods on the top of the bus negligently without tying them properly and A2 being the conductor of the bus did not choose to take precautions and tie the said iron rods loaded on the top of the bus negligently and allowed A3 to load them on the top of the bus and A1 being the driver of the bus drove the bus rashly and negligently without taking due care and caution as a result of which one of the iron rods put by A3 fell on the head of the deceased who was talking with PW3 on the left side of the road and caused serious injuries at 6.00 a.m., on 16-4-1987 and the injured was immediately shifted to Government Hospital as the doctor was not available, taken the injured to a private hospital where he was declared dead. Immediately on the date of the accident, an FIR was registered on the complaint given by one Mr. Jangam Yeswatnam, who was examined as PW2, he has stated in the complaint that on that day when he was talking with the deceased by the road side at about 6.00

a.m., the offending bus came in a rash and negligent manner with a high speed from their back side and one iron ring came with high speed from the top of the bus and fell on the head of the deceased with force. This being the evidence of PW2, Ex.A1 and charge-sheet EX.A4, ignoring the oral and documentary evidence, the learned Judge relying upon the evidence of RW1 alone who was no other than the negligent driver, held that the death was not as a result of the rash and negligent driving of the offending vehicle driver or the conductor. The load on the top of the bus which led to its fall on the head of the deceased resulting in the death shall equally apply omission of the conductor to safely keep the load by the passenger on the top of the bus. When the Court below came to the conclusion that there is omission to keep the load by the passenger that the same conclusion shall equally apply to the conductor and the driver for their omission to make a check with regard to the load made by the passenger safely on the top of the bus. Even otherwise, the evidence clearly establishes that there is a rash, and negligent driving of the driver and the conductor of the bus was also at fault in allowing the unsafe load on the top of the bus which endangered the life of a passerby. I, therefore, hold that the employees of the respondent-Corporation are responsible for the occurrence of the accident which resulted in the death of the deceased and the deceased died due to rash and negligent act of the driver as well as the conductor of the offending vehicle as they failed to take all reasonable precautions of the luggage being carried to prevent loss or damage.

8. The learned Counsel appearing for the APSRTC argued that transportation of iron rim of a bullock cart wheel is also a luggage of the Corporation and it is not an objectionable item to be objected by the conductor or the driver and the accident caused to the deceased with the fall of the iron ring cannot be attributed to the negligent act of the conductor or the driver, and therefore, the respondent-Corporation cannot be held liable for compensation.

9. The learned Counsel for the appellants submitted that the rim of the bullock cart wheel is not a luggage but it is a good which is meant for transportation in a goods vehicle but not on the passenger vehicle, and therefore, permission given by the conductor is illegal, unauthorised and cannot be permitted to carry the goods in a passenger vehicle, and therefore, transportation of the rim on the top of the bus

itself enough to come to the conclusion that the driver was negligent and any accident caused due to the fall of the iron rim, the respondent is liable to pay the compensation irrespective of any particular rash and negligent driving of the driver of the vehicle. The learned Counsel for the appellants also cited certain decisions i.e., the case of *Sharada Bai v. M.D., Karnataka State Road Transport Corporation*, : ILR 1995 KAR1320 , wherein the accident was occurred due to the negligent driver and the conductor of the vehicle. In the said case, a passenger fell down and sustained fatal injuries due to the negligence of the driver and the conductor as while a passenger was loading luggage, the bus moved and the accident occurred and in that context it was held that it is the duty of the driver and the conductor of the vehicle to ensure that in the course of loading and unloading operations, they are under obligation to supervise the operations and ensure that while loading and unloading was going on the persons who are involved in the placement and removal of the luggage on the bus did so without danger to life or limb. The Supreme Court held in the case of *Shivaji Dayanu Patil v. Vatschala Uttam More*, : [1991]3SCR26a , that as long as it is demonstrated that the vehicle was being put to the purpose for which it was intended, namely, to carry the passengers or goods, the fact that the incident took place at a time when it was stationary would make no difference to the aspect of the liability. The learned Counsel for the appellants argued that admittedly the vehicle was a passenger vehicle, the conductor ought not to have allowed to carry the dangerous goods on the top of the vehicle, and therefore, the respondent-Corporation is liable to pay the compensation, it is further argued that the driver ought to have visualised the danger by reason of the carrying of iron rim (ring) of the bullock cart, and therefore, (here is a negligence on the part of the conductor. The learned Counsel for the appellants further argued that the driver has not taken all possible precautions and the fact that he allowed a dangerous item which itself amounts to negligence, and therefore, the respondent-Corporation is liable for the act of its employees and cited a decision of the Supreme Court in the case *Municipal Corporation of Delhi v. Smt. Susheela*, : [1999]2SCR1198 , wherein it was held that the Municipal Corporation was negligent in performing its duty under common law in not removing the dead tree by making periodical check, and therefore, the Corporation was made liable to the damages for the injuries caused to the

deceased by fall of the branch of the tree. In the case of Motukuri Bhemavva v. APSEB, : 1998(1)ALT67 , the Hon'ble Sri Justice C.V.N. Sastri held that the APSEB is liable to pay the compensation for the death caused due to electrocution by deceased-cyclist coming into contact with a snapped live wire lying on the ground or on fence adjacent to cart Track as there was no thunder or unprecedented rain or any act of God and if the APSEB fails for the periodical check ups and if any person caused injury or death, APSEB is liable for damages. For the foregoing reasons and on the oral and documentary evidence available on record, I hold that the respondent-Corporation is liable to pay the compensation to the appellants for the negligent act of its driver and the conductor.

10. With regard to compensation, the appellants claimed an amount of Rs.85,000/- contending that the deceased used to earn Rs.700/- per month from milk vending and Rs.3,000/- from cultivation peryear. The 1st appellant-PW1 in her deposition admitted that the deceased was saving an amount of Rs.1,000/- in milk vending as well as Rs.3,000/- in the cultivation excluding all the expenditure every year. Thus, his total saving was Rs.4,000/- per year after excluding the expenditure. The respondent's Counsel also suggested in the cross-examination that the deceased was used to earn only Rs.10/- as a daily wage. The milk vending as evident from Ex.B5 is not disproved. Therefore, the deceased was earning something on the milk vending. Admittedly, the deceased is having two minor daughters, two wives and mother and unless there was a reasonable earning by the deceased, he could not have maintained the family and taking the cumulative effect of over all evidence, I am of the view that the deceased was earning an amount of Rs. 15/- per day and the monthly income was Rs.450/-. If the 1/3rd amount is deducted for personal expenses, the contribution to the family would be Rs.300/- p.m. and Rs.3,600/- per year. The deceased was aged about 35 years, and therefore, the multiplier 14 is appropriate. Thus, the total dependency comes to Rs.40,400/-. In addition to the said amount, wives are entitled for a sum of Rs.15,000/-towards loss of consortium and Rs.15,000/-towards loss of estate to the claimants. Thus, the appellants are entitled for the total compensation of Rs.70,400/- along with interest at the rate of 12% from the date of the petition to the date of deposit in the Court. The said amount of compensation shall be apportioned equally among the appellants and if the 3rd appellant is not surviving, her share shall be diverted to

the four appellants and all the four appellants are entitled for the apportionment in equal share. The respondent shall deposit the same in the Court within two months from today. The amounts payable to appellants 4 and 5, who are minors, shall be invested in long term deposits till they attain majority. The respondent-Corporation shall deposit the aforesaid amount after deducting Rs.15,000/- already paid. The Tribunal will take into account what measures of safety are required to be adopted to protect the interests of the minors and the appellants in accordance with the principles enunciated by the Supreme Court in the case of General Manager, Kerala State Road Transport Corporation v. Smt. Susamma Thomas, : AIR 1994 SC1631 .

11. In the result, the order of the Tribunal is modified and the appeal is allowed. No costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com