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Court : Andhra Pradesh

Decided On : Aug-26-1999

Reported in : II(2000)ACC708; 2001ACJ901; 2000(5)ALD479; 2000(3)ALT456

Judge : Elip Dharma Rao, J.

Acts : [Motor Vehicles Act, 1988](#) - Sections 166 and 173

Appeal No. : AAO No. 548 of 1993

Appellant : Gouripala Manemma

Respondent : Apsrtc

Advocate for Def. : Mrs. Nanda Ramachandra Rao, SC for APSRTC

Advocate for Pet/Ap. : Mr. Kota Subba Rao, Adv.

Judgement :

ORDER

1. This appeal is filed by the appellant-petitioner being aggrieved by the judgment and decree dated 24-9-1992 passed in OP No. 103 of 1990 on the file of the Chief Judge, City Civil Court, Hyderabad.

2. The brief facts of the case are that on 11-10-1989 the deceased G. Ganesh aged 20 years along with his friends went to see a movie and as they did not get tickets they boarded the APSRTC bus plying on route No.107 belonging to

Dilsukhnagar bus depot at the RTC cross roads to return to their house by changing the bus at Nalgonda cross roads. At that time, the driver of the bus accelerated the bus in a hurry in a rash and negligent manner without caring to see if all the passengers entered the bus safely or not and suddenly twisted the bus and that the deceased was thrown out of the bus and received grievous injuries. Even though the other passengers shouted to stop the bus, the driver did not stop the bus and he stopped the bus only at Charminar cross roads. The friends of the deceased rushed to the spot and shifted the deceased to the Gandhi Hospital, where he died on 19-10-1989. At the time of the accident, the deceased was a commission agent in Vegetables at Madannapet vegetable market and was earning Rs.2,000/- per month. Therefore, the appellant-petitioner who is the mother of the deceased has filed the OP claiming compensation in a sum of Rs.80,000/- for the untimely death of her son.

3. The respondent filed a counter denying the allegation that the bus plying on route No.107 was accelerated suddenly in a rash and negligent manner and that the deceased was thrown out of the bus due to the alleged reckless driving of the bus. The number of the bus or the name of the driver were not given and the FIR shows that the deceased fell down from the bus at RTC cross roads while boarding the bus due to accidental slip and received head injuries. The driver of the bus No AAZ 8872 on route No. 107 on 11-10-1989 between 2.30 and 3 p.m., denied that the bus was involved in any accident near RTC cross roads.

4. The Tribunal below after evaluating the oral and documentary evidence available on record held that the death of the deceased was not caused due to rash and negligent driving of the bus, but it was caused due to the deceased himself slipping from the bus while boarding the bus, resulting in head injury. PW1 is the petitioner and she is no other than the mother of the deceased. She is not a direct witness and she stated that her son died in a motor accident about two years and six months back. PW2 gave evidence only about the earning capacity of the deceased. The direct witness is PW3 and he stated that himself, the deceased and one Seenu went to see a movie in Sandhya theatre on 11-10-1989 and as they did not get the rickets, they boarded the bus at the RTC cross roads bus stop to return to their houses and at the time when the deceased was yet to come

inside the bus, suddenly the bus started and the deceased fell down and when the bus was stopped at VST bus stop, they came to the spot and the police also came there and that the deceased was shifted to the hospital. He further stated that the accident occurred due to rash and negligent driving on the part of the driver of the bus. But the Tribunal held that PW3 is a friend of the deceased and so he is interested in giving the evidence like this and that there is no independent evidence to corroborate the same. The Tribunal below further observed that the accident took place on 11-10-1989 and till 19-10-1989 on which date the deceased died in the hospital, no report was given to the police. Only on the information given by the hospital authorities, the police registered the case on 19-10-1989 in Cr.No.338 of 1989.

5. The learned Counsel for the appellant submitted that in the present case, the respondent has not examined the driver of the vehicle, who is the best person to disclose the reason for the occurrence of the accident. He further contended that the Tribunal below failed to see that the accident occurred only due to the fault of the driver of the bus belonging to the respondent and when the occurrence to the accident is admitted, it is the burden of the respondent to prove that there is no negligence and the respondent failed to prove that the accident occurred not due to the fault of the driver of the bus. Accordingly, applying the principles of *res ipsa loquitur*, the Tribunal would have held that the accident occurred due to the fault of the driver of the ARSRTC bus. On the other hand, the learned Counsel for the respondent contended that the claimant has not given the number of the bus, which was involved in the accident and also the name of the driver. The evidence of RW1 who is working as Superintendent in the respondent-Corporation discloses that in the enquiry conducted by them, it was found that no accident occurred on route No. 107 on 11-10-1989.

6. The Tribunal below observed that as per the FIR., the deceased fell down from the RTC bus at the RTC cross roads while boarding the bus due to accidental slip and received injury to the head and expired on 19-10-1989 while undergoing treatment in the Gandhi Hospital. The FIR does not disclose the number of the bus or the name of the driver as the accused. It is pertinent to note that PW3 who is a direct witness to the occurrence of accident has stated in his evidence that the

accident occurred due to rash and negligent driving of the driver of the bus, in which PW1 lost her son. But the respondent instead of examining the driver of the bus, examined RW1 who is a Superintendent working in the respondent-Corporation and who is not a direct witness to the accident. When once the accident was proved by the appellant, it is for the respondent-Corporation to prove that there was no negligence on the part of the driver of the bus in causing the accident. The driver of the bus is the best person to speak about the accident. The respondent failed to prove that the accident occurred not due to the fault of the driver of the bus. Accordingly, applying the principles of *res ipsa loquitur* which was enunciated by the Supreme Court in a decision reported in *Basthi Kasim Saheb (dead) by LRs. v. The Mysore State Road Transport Corporation and others*, : AIR 1991 SC487 , the Tribunal would have held that the accident occurred due to the fault of the driver of the APSRTC bus. Therefore, I am unable to accept the conclusion arrived at by the Tribunal below holding that the accident did not occur due to the rash and negligent driving of the RTC bus. Thus I hold that the accident occurred due to the fault of the driver of the APSRTC bus and that the respondent is liable to pay the compensation.

7. With regard to the quantum of compensation is concerned, PWs.1 and 2 have stated in their evidence that the deceased was a commission agent in Vegetables and was earning Rs.2000/- per month. After deducting 1/3rd towards the personal expenses of the deceased, it comes to Rs.1,334/-. Therefore, I take the monthly earnings of the deceased at Rs.1,300/- and per annum it comes to Rs.15,600/-. In the instant case, the deceased was unmarried and therefore the age of the mother of the deceased i.e., 40 years can be taken into consideration in order to apply the multiplier. For 40 years of age, the suitable multiplier is '14'. If we apply the multiplier '14' with the annual dependency, it comes to Rs.2,18,400/- (Rs.15,600 x 14). The appellant is also entitled to Rs.20,000/- towards loss of estate and non-pecuniary damages. Therefore, the appellant-Petitioner is entitled to a total compensation of Rs.2,18,400 + Rs.20,000 = Rs.2,38,400. But as the appellant-petitioner has claimed only Rs. 1,10,000/- as per decree of the Tribunal below towards compensation, the claim is restricted to Rs.1,10,000/-. Accordingly, the appellant-petitioner is entitled to a total compensation of Rs.1,10,000/- from the respondent.

8. In the result, the appeal is allowed by enhancing the compensation from Rs.25,000/- to Rs.1,10,000/- with interest at 12% p.a. from the date of petition till the date of realisation. After deposit of the amount by the respondent, the same may be kept in fixed deposit in any Nationalised Bank and the appellant-petitioner is entitled to receive interest quarterly accrued on the fixed deposit amount and the Tribunal below can consider whenever she makes an application for withdrawal of the amount as per the guidelines laid down in *Lilaben U. Gohal v. Oriental Insurance Company Ltd*, : [1996]3SCR450 . No order as to costs.

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