

Apsrtc Vs. Boya Maddamma and ors.

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Court : Andhra Pradesh

Decided On : Jun-27-2007

Reported in : 2008(2)ALD646; 2008(3)ALT34

Judge : G. Chandraiah, J.

Acts : [Motor Vehicles Act, 1988](#)

Appeal No. : CMA No. 3323 of 2001 and Cross-Objection (SR) No. 15895 of 2002

Appellant : Apsrtc

Respondent : Boya Maddamma and ors.

Advocate for Def. : P. Vinayaka Swamy and ;A. Jaya Sankara Reddy, Advs.

Advocate for Pet/Ap. : P. Vinayaka Swamy, SC

Judgement :

G. Chandraiah, J.

1. The instant appeal has been filed by the APSRTC represented by its Managing Director-cum-Vice-Chairman, Musheerabad, Hyderabad aggrieved by order dated 13.7.2001 made in OP No. 737 of 1999 by the learned I Additional District and Sessions Judge-cum-Motor Accidents Claims Tribunal, Kurnool.

2. The respondents, claimants, filed their cross-objections seeking enhancement of compensation already awarded by the learned Tribunal vide its order dated 13.7.2001 in O.P. No.737 of 1999.

3. Though the appeal and the cross-objections have been filed by the appellant and respondents respectively, the point involved is one and the same that whether the learned Tribunal awarded just compensation. In view of the same both, appeal as well as cross-objections, are disposed of by this judgment.

4. It is the case of the petitioners-claimants before the learned Tribunal concisely was that on 9.9.1999 at about 10.30 a.m., one B. Rama Naidu, deceased, was going to his fields on a motor bike bearing No. ATP 4950 and when he reached Yerrabadu rasta in between Kurnool and Bellary road, one APSRTC bus bearing No. AP-9Z-4959 (for short 'the offending vehicle') coming from Kurnool side dashed against the deceased. As a result of which, the deceased died instantaneously by receiving fatal injuries. The claim of the petitioners is that the driver of the offending vehicle drove the bus in a rash and negligent manner with high speed without blowing horn and as such, the accident was occurred. The said accident was occurred only due to fault on the part of the driver of the offending vehicle. Further claim of the petitioners is that the deceased was aged about 38 years, hale and healthy prior to the accident and he was earning Rs. 150/- to Rs. 200/- per day by working as commission agent in a stone crushing machine factory of Veerampalli. It is also their claim that the deceased was cultivating in an extent of Acs. 10 of his land. In view of the said accident, the claimants filed a claim petition for Rs. 2,00,000/- towards compensation for the death of the deceased.

5. The appellant Corporation herein filed counter, inter alia, denying all the material allegations made in the claim petition, submitted that the accident was occurred only due to negligence of the deceased and the deceased was not having valid driving licence. Further, the claim of the petitioners is excessive and exorbitant.

6. Based on the above rival pleadings from either side, the learned Tribunal framed the following issues for trial:

1. Whether the accident occurred due to rash or negligent driving of the bus bearing No.: AP-9Z-4959?
2. Whether the petitioners are entitled to receive compensation, if so, to what amount ?
7. During the course of enquiry, on the side of the petitioners, claimants, P.Ws. 1 to 3 were examined and Exs.A-1 to A-5 were got marked. On the side of the respondent Corporation, R.W. 1 was examined and no documentary evidence was adduced.
8. After appreciating the entire evidence on record, the learned Tribunal has come to the conclusion that the accident was occurred due to rash and negligent driving of the offending vehicle and it awarded Rs. 1,63,000/- towards compensation in total under various heads.
9. It is submitted in the grounds of appeal that the reasons assigned in the order of the learned Tribunal are unsustainable and contrary to evidence on record and as such, the same are liable to be reversed. Further it is also submitted that the learned Tribunal committed an error in discarding the evidence of R.W.1 and in applying the multiplier.
10. On the other hand, in the cross-objections filed by the respondents, claimants, submitted that the learned Tribunal grossly erred in fixing the income of the deceased at Rs.50/- per day and in applying the multiplier as 12.79 instead of 16. The learned Tribunal also erred in awarding only Rs. 2,500/- towards 'Loss of Estate and Love and Affection' and it ought to have awarded Rs. 15,000/-.
11. The point arises for consideration before this Court is whether the learned Tribunal justified in granting the compensation, as stated supra.
12. A perusal of the record it is clear that there is no dispute with regard to the occurrence of accident on 9.9.1999 wherein the deceased died instantaneously. To substantiate the case of the petitioners, P.W. 1, wife of the deceased, filed Exs.A-1 to A-5 and she is not an eye-witness to the incident. P.W. 2 is an eye-witness to the incident, who deposed, inter alia, narrating the facts as mentioned in the claim

petition, that the deceased was coming from his groundnut field on his motor cycle and when the deceased reached Yerrabadu rasta in between Kurnool and Bellary road, the offending vehicle dashed against the deceased and due to which the deceased fell down and sustained injuries and died on the spot. Further, it is also categorically deposed that at the time of accident the deceased was riding his motorcycle on his left side and said accident was occurred due to rash and negligent driving of the offending vehicle. Though he was cross-examined, no incriminate circumstance has been elicited. The version of P.W. 2 is supported with the averments of claim petition and more so, corroborating with that of documentary evidence Exs.A-1, A-2, A-4 and A-5, certified copies of F.I.R., inquest report, Motor Vehicle Inspector's Report and charge-sheet, respectively.

13. On the other hand, the conductor of the offending vehicle was examined as R.W. 1, who deposed, inter alia, that all of a sudden one person came on motor cycle from the fields situated to the left side of the bus and to avoid the accident, the driver of the offending vehicle took the bus to right side and motor cycle hit the bus to its left side near front door of the conductor side and fell down and sustained serious injuries and died on the spot. Though the version of this witness is believable to some extent, but not beyond all reasonable doubts, since he might have been concentrating on his entrusted duties and he could not have observed everything as deposed hereinabove. More so, it is not known why the driver of the offending vehicle was not examined, as he is the proper and direct person to the incident. Taking into consideration the evidences discussed hereinabove and viewing from in any angle, the driver of the offending vehicle should be more cautions in driving the vehicle and it is clear that due to rash and negligent driving of the offending vehicle, the accident was occurred. Therefore, the learned Tribunal did not commit any error in coming to the conclusion that the accident was occurred due to rash and negligent driving of the offending vehicle.

14. Coming to the aspect of compensation, the wife of the deceased stated that at the relevant point of time, the deceased was about 38 years whereas; the documentary evidence discloses that the deceased was 40 years and the learned Tribunal has taken the same. Having regard to the statement of P.W. 1 that the deceased was about 38 years, there is no supportive document to that effect, and

documentary evidence palpably discloses that the deceased was 40 years, I am of the opinion that the learned Tribunal did not commit any error in taking into consideration the age of the deceased.

15. With regard to the income of the deceased, P.W.I deposed that her husband was earning Rs. 20,000/- per annum doing agriculture and Rs. 150/- to Rs. 200/- per day as a commission agent in a stone crushing factory. Further, P.W. 3 deposed that the deceased was earning Rs. 100/- to Rs. 150/-per day as a commission agent. In support of this aspect, no documentary evidence has been adduced and no proprietor of the factor was examined, except P.W.3, who is said to be an operator of Kankara machine. Moreover, if the deceased was earning Rs. 20,000/- per annum on agriculture, P.W. 1 might have produced some documents with regard to owning of land. In the absence of any documentary evidence, the learned Tribunal has rightly disbelieved the evidence of P.Ws.I and 3 and taken the income of the deceased as Rs. 1,500/- per month. After deducting 1/3rd i.e., Rs. 500/- per month towards personal expenses of the deceased, the petitioners lost their dependency at Rs. 1,000/- per month, which comes to Rs. 12,000/- per annum.

16. Though the learned Tribunal applied the multiplier taking into consideration the decision in the case of Bhagavan Das v. Mohd. Arif 1987 ACJ 1052, the [Motor Vehicles Act, 1988](#) is being welfare legislature, I am of the opinion that ends of justice would be met if the II Schedule of the Act is applied. A perusal of the II Schedule of the Act, it is clear that for the age group between 35 and 40, the relevant multiplier is 16 and accordingly, the same is applied. Further, I am of the opinion that ends of justice would be met if the 1st petitioner, wife of the deceased, is awarded Rs. 15,000/- towards consortium and accordingly, the same is awarded.

17. For the foregoing discussion, the petitioners are entitled to Rs. 92,000/- (Rs. 12,000/- x 16) towards loss of dependency, Rs. 15,000/- towards consortium (enhanced from Rs. 5,000/- to Rs. 15,000/-), Rs. 2,000/- towards funeral expenses and Rs. 2,500/- towards loss of estate (as awarded by the learned Tribunal). Thus, in total, the petitioners are entitled to Rs. 2,11,500/- towards compensation.

Though the petitioners restricted their claim to Rs. 2,00,000/-, this Court is having jurisdiction to grant more compensation than claimed. Therefore, I am of the opinion that the petitioners are entitled to Rs. 2,11,500/- towards total compensation. However, it is made clear that taking note of the prevailing rate of interest on bank deposits and the judgment of the Supreme Court in Managing Director, TNSTC Ltd. v. K.I. Bindu and Ors. : AIR 2005 SC4425 , I feel it is just and proper to award rate of interest at 7.5% per annum from the date of appeal till its realization on the enhanced compensation in this appeal. There shall be an order accordingly.

In the result, the civil miscellaneous appeal as well as the cross-objections are disposed of. No order as to costs.

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