

Shaik Babumiya and ors. Vs. General Manager, Apsrtc

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Court : Andhra Pradesh

Decided On : Nov-16-2006

Reported in : 2007(2)ALD680

Judge : C.Y. Somayajulu, J.

Acts : Indian Penal Code (IPC) - Sections 338; [Motor Vehicles Act, 1988](#) - Sections 140 and 166; [Registration of Births and Deaths Act, 1969](#) - Sections 10 and 12

Appeal No. : CMA No. 578 of 1999

Appellant : Shaik Babumiya and ors.

Respondent : General Manager, Apsrtc

Advocate for Pet/Ap. : K. Raji Reddy, Adv.

Judgement :

ORDER

C.Y. Somayajulu, J.

1. Appellants who are the husband and children of Smt. Khaja Bee (the deceased) filed a claim petition under Section 166 of the [Motor Vehicles Act, 1988](#) (the Act), seeking compensation of Rs. 80,000/- alleging that the deceased died due to an accident caused by the rash and negligent driving of the bus belonging to the

respondent. Respondent contested the petition inter alia on the ground that the deceased herself was responsible for the accident. In support of their case, appellants examined the first appellant as PW 1 and another witness as PW 2 and marked Exs. A1 to A6. No evidence either oral or documentary was adduced on behalf of the respondents. It should be stated that the appellants also filed a claim petition under Section 140 of the Act seeking compensation under no fault liability. The Tribunal clubbed both the claim petitions and recorded a finding that inasmuch as there is no evidence on record to show that the deceased died as a result of the injuries received by her in the accident, they are entitled to compensation under Section 140 of the Act and awarded Rs. 12,000/- in the claim petition filed under Section 140 of the Act and dismissed the petition filed under Section 166 of the Act. Aggrieved by the dismissal of the petition under Section 166 of the Act, the claimants preferred this appeal.

2. Heard the learned Counsel for appellants. There is no representation on behalf of the respondent though served.

3. The points for consideration in this appeal are:

(1) Whether the deceased died as a result of the injuries received by her in an accident caused by the bus of the respondent?

(2) To what compensation, if any, are the appellants entitled to?

Point No. 1:

4. Respondent admitted the accident involving the deceased. The specific case of the respondent, in the counter filed on its behalf is that the deceased herself was responsible for the accident because she tried to board the bus while it was in motion. The evidence of PW1 shows that the driver of the bus started the bus even without a signal and took it in the reverse direction and so the deceased fell down. He produced Ex. A1 copy of the First Information Report issued in connection with the accident and Ex.A4 copy of the charge-sheet filed by the police against the driver of the bus under Section 338 IPC in connection with the accident. Though appellants adduced prima facie evidence to show that the

accident occurred due to the rash and negligent driving of the driver of the bus belonging to the respondent, respondent did not choose to examine either the Driver of the bus or the Conductor to swear to the facts and circumstances relating to the accident. So, an adverse inference has to be drawn against the respondent for not examining either the Driver or the Conductor of the bus in support of its case that the deceased tried to board the bus while it was in motion after the Conductor gave a signal and that there was no fault on the part of the Driver of the bus belonging to it. Therefore, it can be taken that the accident occurred due to the rash and negligent driving of the bus by its driver.

5. The next point is whether the death of the deceased was due to the injuries received by her in the accident?

6. There is no evidence on record to show that the deceased underwent treatment for several months in any hospital or to show that she died as a result of the injuries received by her in the accident. As seen from Ex.A4, the police filed the charge-sheet dated 8-5-1994 under Section 338 IPC. Ex.A3 is an application dated 8-2-1995 said to have been given by 4th appellant to PW2, the Village Administrative Officer, informing that his mother died on 8-7-1994 and so a Certificate of Death may be given to him on which PW 2 endorsed that the deceased died on 8-7-1994 and that her husband (first appellant) is the heir to her estate. PW 2 stated, during cross-examination, that he does not know about the accident and that he does not know how the deceased suffered injuries and that he does not know the reasons for her death and that he did not give any intimation to the police about her death. Ex. A2 is the certificate issued by the Sarpanch of the Gram Panchayat relating to the death of the deceased. Ex.A2 is not relevant to decide the point whether the deceased died due to the injuries received by her in the accident. From Ex. A3 application given by 4th appellant to PW 2, it can be inferred that the appellants did not get the death of the deceased registered under Section 10 of the [Registration of Births and Deaths Act, 1969](#) (1969 Act), within the time prescribed. As per Section 10 of the 1969 Act, it is the duty of PW1 to get the death of the deceased registered. Had the death of the deceased been registered, as per Section 12 of the 1969 Act, an extract would have been given to him free of cost certifying the death of the deceased. As rightly observed by the

Tribunal, no record relating to the treatment underwent by the deceased in any hospital is produced by the appellants. Had the appellants produced the certificate of extract from the Register of Deaths the cause of death of the deceased would have been known. Since they failed to produce the same, an inference can be drawn that they withheld the same only because the entry therein would be adverse to them. So, I hold that the evidence on record does not show that the death of the deceased was due to the accident in which she was involved. The point is answered accordingly.

Point No. 2:

7. Ex. A5 copy of the Medical Certificate read with Ex.A6 certificate of X-Ray shows that the deceased was having two lacerated wounds and tenderness and swelling over the upper third of the left leg and that the X-Ray showed fracture of left Tibia at upper 1/3rd, left ankle and fracture of the lower part of Fibula. Therefore, she must have undergone pain and suffering. An amount of Rs. 7,500/- would be a reasonable amount of compensation for the pain and suffering undergone by the deceased.

8. Since the deceased suffered two fractures she must have been in bed for about six months and so she is entitled to damages towards transport to hospital, extract nourishment, etc. So, Rs. 5,000/- can be awarded under that head.

9. Since the appellants might have lost the services of the deceased during the period under which she was undergoing treatment and some attendant must have been serving them as well as the deceased, an amount of Rs. 5,000/- can be awarded towards attendant charges for that period.

10. Thus, the deceased would have been entitled to Rs. 7,500/- + Rs. 5,000/- + Rs. 5,000/- = Rs. 17,500/- as compensation for the injuries suffered by her in the accident. But, since the appellants were already awarded Rs. 12,000/- under Section 140 of the Act, they are entitled to the remaining amount of Rs. 5,500/- in the petition filed by them under Section 166 of the Act.

11. So, I hold that the appellants are entitled to Rs. 5,500/- as compensation from the respondent for the injuries suffered by the deceased. The point is answered accordingly.

12. In the result, the appeal is allowed in part and an award is passed for Rs. 5,500/-with interest at 9% p.a. from 3-11-1998 (the date of award of the Tribunal) till the date of deposit into Court with proportionate costs in the Tribunal. Rest of the claim of the appellants is dismissed without costs. Parties are directed to bear their own costs in this appeal.

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