

HON'BLE SRI JUSTICE GHULAM MOHAMMED

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C.M.A. No 3215 of 2002

JUDGMENT:

This Civil Miscellaneous Appeal is filed by the A.P.S.R.T.C. challenging the order dated 23.7.2001 in M.V.O.P. No. 350 of 2001 on the file of the Motor Accidents Claims Tribunal-cum-District Judge, Kadapa.

The respondent-claimant, filed the aforementioned O.P. alleging that on 18.1.2001, while the respondent along with some others was proceeding in a jeep bearing No. AP 04 E 1270 belonging to appellant No.2 and when they reached Sanjeevanagar culvert, a bus belonging to the appellant-Corporation bearing Registration No. AP 10 Z 9461 came in a rash and negligent manner and in a high speed and dashed against the scooter of the deceased. As a result, the respondent sustained grievous injuries. Immediately, he was shifted to Government Hospital, Kadapa. By virtue of the accident, the respondent sustained injuries on his right upper arm near elbow joint and grievous injuries on right shoulder, right forehead, chin, dorsum of right hand and multiple injuries all over the body. The respondent, therefore, filed the aforementioned O.P. claiming compensation of Rs. 2,50,000/-.

While opposing the O.P., the appellant-Corporation filed its counter stating that when the bus reached near the accident place, the driver observed that the jeep was coming in a zig zag manner and all the persons in the jeep were in a drunken state and on seeing this, he stopped the bus on the left side of the road, then the jeep came near the bus and touched the bus on its right side and hence, the accident did not occur on account of rash and negligent driving on the part of its driver. It also stated that the respondent did not sustain any permanent disability. Hence, the appellant-Corporation is not liable to pay any compensation amount.

Basing on the aforesaid pleadings, the Tribunal framed the following issues for trial:

1. Whether the accident occurred due to the rash and negligent driving of the RTC bus bearing No. AP 10 Z 9461 of Rayachoty and jeep bearing No AP 04 E 1270 by its driver ?
2. Whether the petitioner is entitled for compensation and if so to what amount ?
3. To what relief ?

In order to prove his case, the respondent, got himself examined as P.W.1 besides examining the doctor who treated him as P.W.2 and got marked Exs.A1 to A8. On behalf of the appellant-Corporation, no oral or documentary evidence was adduced

The Tribunal on a consideration of the oral and documentary evidence on record, granted an amount of Rs.2,29,000/- as compensation. Aggrieved, the appellant-Corporation filed the present appeal.

Learned Standing Counsel for the appellant contended that the driver of the jeep was solely responsible for the occurrence of the accident and the Tribunal without taking the same into consideration, has erred in observing that the accident occurred on account of rash and negligent driving of the driver of the bus alone. He further contended that even though there is no evidence on record to show that the respondent was earning an amount of Rs.1,500/- per month, the Tribunal erred in taking the income of the deceased at Rs.1,500/-. He, therefore, contended that the Tribunal did not appreciate the evidence in proper perspective and erroneously granted a sum of Rs. 2,28,849/-. Hence, he prayed that the appeal be allowed by setting aside the impugned order.

On the other hand, learned counsel for the respondent supported the impugned order and stated that the impugned order does not require any interference.

Admittedly, in the instant case, the respondent filed Exs. A1,A2 and A3, copies of FIR, wound certificate and charge sheet to prove that the respondent sustained injuries in the accident, which occurred on 18.1.2000. It is also seen from the record that for the reasons best known to it, the Corporation did not choose to examine the driver of the bus, who drove the

bus on the date of accident. Further, the appellant-Corporation also did not file any contra evidence to disprove the same, in the absence of which, the Tribunal rightly held that the accident occurred due to rash and negligent driving on the part of the driver of the bus belonging to the Corporation. Hence, the finding of the Tribunal of that the accident occurred due to rash and negligent driving on the part of the driver of the bus belonging to the appellant-corporation needs no interference.

In so far as the income of the respondent is concerned, the respondents-claimants pleaded before the Tribunal that the respondent was earning an amount of Rs.50/- per day by doing coolie work and Rs.1,500/- per month and in the absence of any contra evidence let in by the appellant-Corporation to disprove the same, the Tribunal was justified in fixing the income of the deceased at Rs. 1,500/- per month and Rs.18000/- annually.

The respondent also pleaded that he sustained disability to an extent of 70% by virtue of the injuries sustained by him. However, the Tribunal on a perusal of Ex.A4, disability certificate assessed the disability sustained by the respondent at 50%.

In so far as multiplier is concerned, since the appellant was aged about 18 years as on the date of the accident, the appropriate multiplier that would be applicable to the age of the appellant is 16 and the Tribunal rightly applied the said multiplier. Therefore, by applying the multiplier of 16, the loss of earnings are assessed at Rs.1,44,000/- (Rs. 18000 x 50% x 16).

In addition to this, the Tribunal also granted an amount of Rs.45,000/- under Ex.A5; Rs. 32,849/- towards medical expenses and Rs.5,000/- towards transport charges and Rs.2,000/- towards pain and suffering, to which the respondent is rightly entitled to. In all, an amount of Rs. 2,28,849/-, which was rounded off to Rs.2,29,000/- was granted by the Tribunal as compensation together with interest at 9% per annum.

Hence, it cannot be said that the compensation awarded by the Tribunal was excessive.

In the circumstances, I do not find any justification to interfere with the award passed by the Tribunal. The appeal is accordingly dismissed. No costs.

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GHULAM MOHAMMED,J

DATE: 31<sup>st</sup> March, 2011

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