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Andhra Pradesh High Court

Case No: AAO No. 907 of 1991 and Cross-Objections SR No. 45480 of 1991

Chairman and Managing Director, APSRTC, Mushirabad, Hyd.	APPELLANT
Vs	
M. Lakshmi and others	RESPONDENT

Date of Decision: June 9, 2000

Acts Referred:

- Motor Vehicles Act, 1939 - Section 110

Citation: (2001) 1 ACC 20 : (2001) ACJ 1065 : (2000) 4 ALD 573 : (2000) 4 ALT 438

Hon'ble Judges: Ghulam Mohammed, J

Bench: Single Bench

Advocate: Mrs. Nanda R. Rao, SC for APSRTC, for the Appellant; Mr. Kota Subba Rao, for the Respondent

Judgement

1. This appeal is preferred by the respondent-Road Transport Corporation against the award passed by the Additional Chief Judge, City Civil Court, Secunderabad in OP No.598 of 1988 dated 19-2-1991 awarding a sum of Rs.l, 18,5007-with 12% interest per annum as against the respondents-appellant for the death of one Shanker Harishankar, who died in a motor accident on 14-7-1988.

2. The claimants-respondents, also filed cross-objections seeking enhancement of the compensation.

3. Brief facts of the case are as follows:

On 14-7-1988 at about 10-15 p.m., the deceased after taking tea in the hotel nearby Mettuguda cross roads along with his brother, moved on the road from right side to left side. At that juncture an RTC bus bearing No.AEZ 3915 was coming from Secunderabad to ECIL rashly and negligently, and hit the deceased with the result the deceased fell

down and bleeding from his nose started. He was taken to the hospital where he succumbed to the injuries. The claimants who are the wife, children and mother of the deceased filed claim petition u/s 110A of the Motor Vehicle Act claiming compensation of Rs. 1,50,000/-.

4. A counter was filed by the respondent-Corporation denying that due to rash and negligent driving of the RTC bus the accident occurred. It is stated that while the bus was proceeding from Secunderabad to ECIL, at Mettuguda cross roads the driver saw a pedestrian crossing the road from right side to left side with unsteady gait and apparently in a drunken condition and on seeing him the driver stopped the bus. But the deceased on seeing a Fiat car and two scooters coming from the opposite direction to the bus, stopped back and hit the right front bumper of the bus which was stationed and fell down on the road and there was no rashness or negligence on the part of the bus driver. The appellant-Corporation denied the age and income of the deceased.

5. On the above pleadings, the Tribunal framed necessary issues for consideration. The claimants examined PWs.l and 2 and marked Exs.Al to A3. On behalf of the respondent-Corporation, appellant herein, RWI was examined but marked no documents. The Tribunal after considering the evidence available on record found that the accident occurred due to rash and negligent driving of the RTC bus and granted compensation of Rs.l,18,500/-.

6. Learned Counsel appearing for the appellant-Corporation contended that in the given situations the Tribunal ought to have applied the theory of contributory negligence, in view of the fact that the deceased while crossing the road has to be more careful and cautious and he was not careful and thus contributed for the accident. Therefore, it is contended, the award passed by the Tribunal is not proper.

7. On the other hand learned Counsel for the claimants-respondents contended that in the given situations, as stated above, the Tribunal has rightly held that the driver of the bus is negligent in driving the vehicle. He also drew my attention to the decision of this Court reported in G. Pitchaiah Naidu Vs. APSEB, Madakaira and another, .

8. I have examined the facts of this case gone through the evidence and also the findings reached by the Tribunal. The evidence in the facts and circumstances of the case suggests that the theory of contributory negligence cannot be applied though there was may be some fault on the part of the deceased while crossing the road.

9. PW1 is the wife of the deceased. As she is not an eyewitness, her evidence is not useful for proving the accident. The evidence of PW2, an independent eyewitness to the accident who accompanied the deceased is relevant to decide the aspect of negligence on the part of Ihe driver of the bus. He deposed that he witnessed the accident that occurred on 14-7-1988 near Mettuguda cross roads. He further stated that he and his deceased brother after taking tea at a Hotel, the deceased wanted to cross the road and

at that time the RTC bus in question came in a rash and negligent manner, in zig zag manner from Secundcrabad towards Tarnaka side and dashed against the deceased resulting in the deceased sustaining severe injuries on his head. The deceased was taken to the Gandhi hospital immediately. PW2 gave a complaint to the police about the accident and he was examined by the police. He deposed in clear and categorical terms that there was no negligence on the part of the deceased while going on the road.

10. To controvert the evidence of PW2, the driver of the RTC bus examined himself asRWl. RW1 deposed that he was driving the bus in question at the relevant point of time and while proceeding from Secunderabad to ECIL via Mettuguda and when the bus reached near Mettuguda, he found a person coming in a drunken state walking unsteadily and in a confused state, hit against the front bumper of the bus and fell down. Immediately, RW1 stopped the bus and found the deceased bleeding from his nose. It is significant to note that in the cross-examination he stated that he does not know the place of the accident and he denied the suggestion that due to his rash and negligent driving the accident occurred. The Tribunal disbelieved the evidence of RW1 driver of the bus and observed that if RW1 saw the deceased crossing the road, he could have been more careful and slowed down the speed of the bus. The version of RWI to the effect that the deceased was in a drunken condition was disproved by the findings given in Ex.A2 post-mortem report according to which the stomach of the deceased does not contain the liquor. Believing the version of PW2, who is an eye-witness to the accident, more particularly when he has given a complaint immediately after the incident to the police, and on careful examination of the testimony coupled with the circumstances, the Tribunal rightly came to the conclusion that the accident occurred due to rash and negligent driving of the bus driver. In the circumstances, I do not find any infirmity in the finding of the Tribunal.

11. As regards the determination of just compensation under Motor Vehicle Act, the Tribunal though applied the multiplier method, wrongly took 10 as multiplier by taking into account the age of the deceased as 47 years as per Ex.A2. By taking into account the earnings of the deceased the Tribunal has taken Rs.800/- as contribution towards family and in all awarded a total compensation of Rs.1,18,500/-. Salary of the deceased as per Ex. A3 was approximately 1500 and by deducting l/3rd towards personal expenses Rs.1000/- can be taken as contribution to the family, which annually conies to Rs.I2,000/-. As per the evidence of PWs. 1 and 2, they deposed that the deceased was aged about 40 years. Except their oral version, no documentary evidence was produced to show that the deceased was aged about 40 years. In the absence of any evidence, the learned Judge relied upon Ex.A2 post-mortem certificate which indicates approximate age of the deceased as 47 years. Considering Ex.A2, in the circumstances, I take the age of the deceased as 47 and by applying the multiplier 12 as per the decision of the Apex Court in U.P. State Road Transport Corporation and Others Vs. Trilok Chandra and Others, , the loss of dependency comes to Rs.1,44,000/- (ie, Rs.12,000 x 12). The appellants are entitled to Rs.15,000/-each towards loss of estate and loss of consortium. Thus the total

compensation works out to Rs.l,74,000/-. I am afraid, I cannot grant more than the amount claimed in the claim petition, since the total compensation claimed in the claim petition is Rs.l,50,000/-, the compensation is restricted to Rs.l,50,000/-.

12. Accordingly the cross objections preferred by the claimants-respondents are allowed enhancing the compensation to Rs. 1,50,000/- together with interest at the rate of 12% per annum from the date of petition till realisation.

13. The apportionment made by the Tribunal is confirmed. However, the appellants are permitted to move the Tribunal seeking withdrawal of the amount and on such application is being filed the Tribunal is directed to dispose of the same in accordance with law.

14. For the aforesaid reasons, the appeal preferred by the appellant-Corporation is dismissed and the cross objections are allowed. No costs.