(1996) 11 AP CK 0012

Andhra Pradesh High Court

Case No: None

A.P.S.R.T.C. — APPELLANT

Vs

Smt. T. Yashodha and Others — RESPONDENT

Date of Decision: Nov. 4, 1996

Acts Referred:

- Motor Vehicles Act, 1939 - Section 110A

Citation: (1998) 1 ACC 245

Hon'ble Judges: B.K. Somasekhara, J

Bench: Single Bench

Judgement

B.K. Somasekhara, J.

The award of the Motor Accident Claims Tribunal-cum-Addl. Chief Judge, City Civil Court, Secunderabad in OP No. 354 of 1987 dated 30.1.1990 is challenged. That was a claim petition u/s 110-A of the MV Act 1939 (for short the Act) filed by the respondents herein, who are the wife, children, parents and brother of the deceased Vithal, who died in a motor vehicle accident said to have been caused due to the negligence of the driver of the RTC bus bearing No. AAZ 1840 on 23.1.1987. The appellant is the Corporation which contested the claim which was laid for recovery of Rs. 1,00,000/- by way of compensation. The Tribunal, after holding an enquiry, held that the accident was due to the negligence of the driver of the bus, the age of the deceased at 30 years and his income at Rs. 500/-per month and fixed Rs. 300/- per month as the loss of contribution to the family and with the multiplier of 16 for his age, assessed the loss of dependency at Rs. 57,600/-. Adding a further sum of Rs. 7,500/- towards pain and suffering and Rs. 7,500/- towards loss of consortium, escalated it to Rs. 70,100/-.

2. There is no representation for the respondents/claimants.

3. Miss Mrudula, the learned Counsel appearing on behalf of the Standing Counsel for the appellant/Corporation has raised the following three contentions in this

appeal, (1) that the driver who is said to have caused the accident is not made a party to the proceedings, (2) that the finding of negligence as against the driver is wrong and opposed to the evidence and (3) the assessment of compensation is not based on materials and therefore the award has to be set aside.

4. The first contention has no fords. The law is settled that the driver is not a necessary party. Neither Section 110-A of the Act nor the rules framed thereunder contemplates impleading the driver as a party. The owner of the vehicle will be vicariously liable for the act of negligence on the part of the driver and when once that is established, the owner of the vehicle becomes squarely liable to pay the compensation and if there is an insurer, by virtue of the indemnity clause in the insurance policy, the insurer becomes liable. Moreover the scheme of the Act in Chapter XI and the rules framed thereunder do not indicate as to who are the necessary parties or proper parties. However, the Tribunal will hold an enquiry after giving notice to the person who may be interested or going to be aggrieved ultimately. Rule 533-A of the APMV Rules which regulates the application for claim etc., in Sub-clause (6) empowers the Tribunal to decide the matter after obtaining information from police, medical and other authorities and pass the award whether or not the parties attend on the appointed date and according to the said provision, the Tribunal shall proceed to pass the award on the basis of the Registration Certificate, insurance certificate, copy of FIR, post mortem report etc. Therefore, it is for the Tribunal to secure the necessary material even if the parties fail and to decide on the basis of them.

5. It was alleged by the claimants that while the deceased was going on a TVS Moped at the relevant time, the bus came from behind and dashed it resulting in the injuries to the deceased and death. The appellant, in the written statement, while denying such allegations, in para 3 stated as follows:

It is submitted that after the bus started from Ramakrishna Muth stage towards Nampalli around 1 p.m. on 23.2.1987, a TVS Moped proceeding in the same direction attempted to take a sudden right turn on the main read and hit the front foot board whereupon the mopedist and the pillion ride fell down and injured themselves fatally. There was no negligence on the part of the bus driver nor did he cause the accident.

Therein the accident was admitted, but the cause of the accident was sought to be explained. Ex. A1 is the copy of the FIR registered by the concerned police showing the involvement of the bus in the accident and the cause of the accident being the negligence of the driver of the bus. Neither the written statement of the appellant mentioned that the driver of the bus filed the FIR nor any material is produced before the Tribunal in that connection. The driver of the bus is also not examined to explain the cause of the accident. The law is that the claimants are only to prove the accident and the manner in which it occurred. Thereupon both from the doctrine of ''res ipsa loquitor'' and the shifting of burden, if any, it is for the owner of the bus or

the respondents in the case to prove that the driver was acting with all diligence and there was no negligence on his part. Particularly when specific case is taken in the written statement as above, it is for the appellant to prove it by examining the driver of the vehicle or anybody having means of knowledge about it. On the failure to do it, the Tribunal was right in holding the negligence against the driver of the bus and there is no reason to interfere with such a finding.

6. Regarding the quantum of compensation, the Tribunal rightly adopted the multiplier method. But the multiplier of 16 for a person aged 30 years is not proper as per the settled law in Susamma Thomas case 1994 (2) SCC 174 : (1994) 1 ACC 346, which ought to have been 14 and with the income of the deceased at Rs. 500/- per month, the multiplicand is rightly fixed at Rs. 3,600/- per annum after deducting 1/3rd towards the personal expenses of the deceased. With such multiplicand and the multiplier of 14, the loss of dependency comes to Rs. 50,400/- and adding Rs. 10,000/- towards loss of expectation of life and Rs. 15,000/- towards loss of consortium to the wife of the deceased and Rs. 3,000/- towards funeral and incidental expenses, the total exceeds Rs. 80,000/- and actually the Tribunal has awarded less than that. Apart from that, for adequate reasons such a compensation having been arrived at by adopting the multiplier method, this Court finds no reason to interfere with the same.

In the result, the appeal is dismissed. No costs.