
(2001) 04 AP CK 0093

In the Andhra Pradesh High Court

Case No : A.A.O. No. 2617 of 1998 and Ors.

Andhra Pradesh State Road Trans. Corpn.

APPELLANT

Vs

P. Venkat Rao and Others

RESPONDENT

Date of Decision : 24-04-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 110, 140, 163A, 165

Citation : (2002) ACJ 1506

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : C.V. Ramulu, for the Appellant; G. Pedda Babu, for the Respondent

Judgement

N.V. Ramana, J.—All these appeals arise out of the same accident. The appellant in CM.A. No. 2692 of 1998 is the claimant in O.P. No. 631 of 1993. He filed the appeal being dissatisfied with the quantum of compensation awarded by the Tribunal. The remaining appeals are filed by the A.P.S.R.T.C. aggrieved by the orders and decrees passed by the Tribunal granting compensation to claimants-respondents therein by the Tribunal. As the facts and question involved in all these cases are identical, these appeals are heard together and are disposed of by this common order.

2. Before proceeding to consider the appeals, the brief facts that led to the filing of these appeals may be noticed. On 8.3.1993, the Express R.T.C. bus No. AP 9-Z 4236 proceeding from Hyderabad and bound for Chilakaluripet reached Narsaraopet at 4 a.m. Thereafter from Narsaraopet it started at 4.10 a.m. and when the bus reached near the Vinukonda rail crossing gate at Narsaraopet, two persons stopped the bus and boarded the bus. Then the bus started to go to Chilakaluripet. When the bus reached Kavuru village, fire broke out due to the use of petrol and it ultimately came out that the two persons who entered the bus with petrol cans poured kerosene and lit a matchstick. Due to the fire accident in the bus some persons have lost their lives and some persons sustained severe burn injuries and became disabled. Some of the injured and

some of the dependants of the deceased who died in the accident have filed O.Ps. in the Motor Accidents Claims Tribunal at Guntur. The present appeals are the offshoot of some of the O.Ps. decided by the said Tribunal.

C.M.A. Nos. 1992, 1997, 1999, 2000 and 2125 of 2000:

3. All these appeals are filed by the A.P.S.R.T.C. aggrieved by the orders and decrees passed in O.P. Nos. 586 and 585 of 1996; 487 and 500 of 1994; and 597 of 1998 respectively.

4. The claimants in O.P. No. 586 of 1996 are the legal heirs of one Md. Rafiq Ahmed, who was aged 22 years, studying B.Ed. course and died in the said incident. They filed the O.P. for a compensation of Rs. 1,00,000. The Tribunal determined the compensation payable as Rs. 1,00,000 and after deducting Rs. 50,000 paid as ex gratia, arrived at the compensation payable as Rs. 50,000. Aggrieved by the same, the R.T.C. filed C.M.A. No. 1992 of 2000.

5. The claimants in O.P. No. 585 of 1996 are the legal heirs of one Pendam Srinivas, a boy who just passed his S.S.C. examination who died in the very same fire accident in the bus. They filed the O.P. for a compensation of Rs. 1,00,000. The Tribunal determined the compensation as Rs. 1,00,000 and after deducting the ex gratia amount of Rs. 50,000 paid to them, awarded a compensation of Rs. 50,000. Aggrieved by the same, the R.T.C. filed C.M.A. No. 1997 of 2000.

6. The claimants in O.P. No. 487 of 1994 are the legal heirs of one Margani Apparao who died in the same incident. They filed the O.P. for a compensation of Rs. 1,00,000 and the Tribunal determined the compensation as Rs. 1,00,000 and after deducting the ex gratia of Rs. 50,000 paid to them, awarded the compensation of Rs. 50,000 and apportioned the compensation amongst petitioner Nos. 1 to 4 and respondent No. 2 in the O.P. who are the legal heirs of the deceased. Aggrieved by the same, the R.T.C. filed C.M.A. No. 1999 of 2000.

7. The claimants in O.P. No. 500 of 1994 are the legal heirs of one Yendrapati Purushottam who died in the same incident. They filed the O.P. for a compensation of Rs. 1,00,000. The Tribunal awarded a total compensation of Rs. 1,00,000 and apportioned the same amongst petitioner Nos. 1 and 2 and respondent Nos. 2 to 4 in the O.P., who are the legal heirs of the deceased. Aggrieved by the same, the R.T.C. filed C.M.A. No. 2000 of 2000.

8. The claimants in O.P. No. 597 of 1998 are the father and mother of the deceased who died in the very same incident. They filed the O.P. for a compensation of Rs. 3,00,000. The Tribunal determined the compensation as Rs. 1,01,000 and after deducting the ex gratia amount of Rs. 50,000 paid to the claimants, awarded a compensation of Rs. 51,000. Aggrieved by the same, the R.T.C. filed C.M.A. No. 2125 of 2000.

9. The main contention of the appellant A.P.S.R.T.C. is that there is no negligence or rashness on the part of the driver or conductor of the bus in question and the

incident took place due to the mischief committed by the miscreants who poured petrol on the bus with an intention to rob the inmates of the bus. It is contended that at the time of the incident/accident the bus was stopped and so the incident/accident did not arise out of use of the motor vehicle and consequently, the appellant Corporation cannot legitimately be fastened with any liability to pay the compensation in respect of the incident/accident. Hence the Corporation was not liable to pay any compensation.

10. In the instant cases, the accident took place on 8.3.1993 at about 4.45 a.m. near Kavuru village. The claimants laid claims for compensation before the Motor Accidents Claims Tribunal stating that the injured/deceased, as the case may be, had boarded the bus run by the A.P.S.R.T.C. to reach Chilakaluripet. When the said bus reached Kavuru village, while the injured/deceased were in deep sleep, a fire broke out resulting in the death of 5 persons and burn injuries to the others. According to the claimants, the fire broke out due to negligent act of conductor and driver of A.P.S.R.T.C. in permitting inflammable material to be carried inside the bus.

11. On behalf of respondent-claimants, it is contended that the incident took place due to negligence of the employees of the A.P.S.R.T.C. bus and as the incident/accident took place out of the use of motor vehicle, A.P.S.R.T.C. is vicariously liable for the negligent acts of its employees and hence there are no grounds to interfere with the orders under appeal.

12. In view of the rival contentions advanced by the counsel for the appellant and respondents, the points that arise for determination are:

(1) Whether the appellant Corporation is liable to pay the compensation to the claimants?

(2) Whether the accident arose "out of the use" of the motor vehicle?

13. Before the Tribunal the claimants and the A.P.S.R.T.C. adduced oral and documentary evidence. The Tribunal after considering the evidence on record held that the fire accident was caused in the bus due to negligence of the employees (conductor and driver) of the A.P.S.R.T.C. bus and appellant Corporation is vicariously liable to pay compensation to the claimants in the respective O.Ps.

14. In this context, it is just and necessary to look into the provisions of Section 165 of Motor Vehicles Act which read thus:

165. Claims Tribunals.-(I) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereinafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.

Explanation.-For the removal of doubts, it is hereby declared that the expression "claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles" includes claims for compensation u/s 140 and Section 163-A.

(2) A Claims Tribunal shall consist of such number of members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof.

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15. It is clear from the provisions of Section 165 of the Motor Vehicles Act that the Claims Tribunals have been set up and conferred with the jurisdiction to adjudicate upon the claims for compensation arising in respect of the accidents resulting in death of, or bodily injury to, persons, arising out of the use of motor vehicle.

16. In the present appeals, at the time of accident, the bus was being used for the purpose of transporting the passengers. All the passengers including the injured or the deceased, as the case may be, boarded the bus after paying the requisite fare to the conductor. Merely because the bus was stopped on the road at the time of incident, it does not mean that the bus ceased to be a "motor vehicle" at the time of accident. The term "arising out of the use of motor vehicle" has wider connotation. Simply because the bus was stopped at the time of accident due to the threat given by some miscreants to the driver of the bus, it does not mean that the bus ceased to be a motor vehicle or it cannot be said that the bus was not in use when the fateful incident/accident occurred. The evidence on record clearly indicates that the inmates of the bus sustained injuries as a result of the fire that broke out in the bus. The victims of the accident in no way contributed either to the incident/accident or to the fire. In addition to that, when some persons were entering into the bus with combustible material, explosive substances or some inflammable material, it is the bounden duty of the employees of the appellant Corporation (i.e., the conductor and driver of the bus, in this case) to prevent and object to their entry into the bus, in the larger interests of the passengers. The appellant Corporation is vicariously liable for payment of compensation and the relationship between the use of the motor vehicle and the accident resulting in the death or permanent disablement, is not required to be direct or proximate.

17. In my considered view, the use of the motor vehicle was the main contributory and relevant factor to determine as to whether the accident occurred out of the use of motor vehicle or not. The oral and documentary evidence on record clearly establishes that the fire accident occurred in the bus due to negligence of the employees of the appellant Corporation. The conductor and driver of the bus failed to prevent the miscreants from bringing the petrol tins into the bus. As per the evidence on record, every passenger has to board or alight the bus invariably in the presence of the conductor because one has

necessarily to pass through the conductor seat, which will be at the entrance door of the bus. It is the duty of the conductor to notice each and every passenger who is either boarding or alighting. The evidence on record clearly discloses that the conductor failed to discharge his duty and was negligent in permitting the inflammable material to be brought into the bus by the miscreants. The evidence on record clearly discloses that the conductor failed to check the miscreants while they were entering into the bus with petrol cans.

18. Having carefully gone through the oral and documentary evidence on record, I am of the view that the incident/accident occurred due to negligence on the part of the employees of the bus (conductor and driver) in not taking care and allowing some inflammable material to be carried inside the bus. If accident of any nature occurs out of the use of motor vehicle, whether it is propelled or standing, the appellant is liable to pay compensation.

19. The Hon^{ble} Apex Court in Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, , while considering the interpretation of the expression "arising out of the use of motor vehicle", explained the ambit and scope of the words "arising out of" and "caused by", in the following terms:

The word "use", in the context of motor vehicle, has been construed in a wider sense to include the period when the vehicle is not moving and is stationary being either parked on the road and when it is not in a position to move due to some breakdown or mechanical defect.

In the context of motor accidents, the expressions "caused by" and "arising out of" are often used in statutes. Although both these expressions imply a causal relationship between the accident resulting in injury and the use of the motor vehicle but they differ in the degree of proximity of such relationship. This distinction has been lucidly brought out in the decision of the High Court of Australia in *Government Insurance Office of N.S.W. v. R.J. Green & Lloyd Pty. Ltd.* 1967 ACJ 329 (HC, Australia), wherein Lord Barwick, C.J., stated:

Bearing in mind the general purpose of the Act, I think the expression "arising out of" must be taken to require a less proximate relationship of the injury to the relevant use of the vehicle than is required to satisfy the words "caused by". It may be that an association of the injury with the use of the vehicle while it cannot be said that use was causally related to the injury may yet be enough to satisfy the expression "arising out of" as used in the Act and in the policy.

20. In similar circumstances, in *Samir Chanda Vs. Managing Director, Assam State TPT. Corpn.*, , the Hon^{ble} Supreme Court while reversing the judgment rendered by the Gauhati High Court in *Managing Director, A.S.T.C. Vs. Samir Chanda and Another*, , held that when a bomb exploded inside the bus owned by the State Road Transport Corporation when it reached the last stop and when the passengers were alighting from the bus, the accident arose "out of the use of motor vehicle". It was also held that the driver and conductor of the bus have to take the required care to prevent such accidents. The Supreme Court held:

After going through the judgment of the High Court, we are of the view that the High Court was not right on facts that there was no negligence on the part of the owner or the driver of the bus especially when the appellant has specifically pleaded about negligence which was accepted by Claims Tribunal in the light of the pleadings and of the evidence produced before it. The explosion took place inside the bus is an admitted fact and the usual police escort was not there. The High Court, except observing that there was no negligence, has not upset the finding of the Tribunal that the atmosphere during the period of accident was so polluted requiring care on the part of the conductor and driver of the bus. There cannot be any doubt that the accident arose out of the use of the motor vehicle justifying the claim of the appellant.

21. In another decision of the Supreme Court in Smt. Rita Devi and Others Vs. New India Assurance Co. Ltd. and Another, , while dealing with the scope of the expression "death due to accident arising out of the use of motor vehicle", it was held that the legal heirs of the deceased are entitled to compensation from the owner and the insurer of the motor vehicle when the accident arises out of the use of motor vehicle. In that context, the Supreme Court held:

As pointed out by the learned counsel for the appellants, the Motor Vehicles Act does not define the word "accident". However, Section 163-A of the Motor Vehicles Act provides for payment of compensation for the death or injury suffered in a motor vehicle accident on a structured formula basis in Section 163-A of the Act. Sub-section (1) of the said section says that notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Sub-section (2) of the said section also provides, "in any claim for compensation under that sub-section, the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person".

A conjoint reading of the above two sub-sections of Section 163-A shows that a victim or his heirs are entitled to claim from the owner/insurance company a compensation for the death or permanent disablement suffered due to the accident arising out of the use of the motor vehicle, without having to prove wrongful act or neglect or default of anyone. Thus it is clear, if it is established by the claimants that the death or disablement was caused due to an accident arising out of the use of the motor vehicle, then they will be entitled for payment of compensation.

22. A Division Bench of this court, while considering a similar question, in Andhra

Pradesh State Road Trans. Corpn. Vs. Sanjay Kumar Bhawsingkha and Others, , confirmed the findings of the Tribunal holding that the accident occurred due to negligence on the part of the conductor and driver in the bus in not taking care and allowing some inflammable and combustible substances to be kept in the cabin of the driver instead of putting on the top of the bus. In the above said judgment, while the bus was at the R.T.C. bus stand at Tirupati, suddenly the bus caught fire and took away the lives of 16 passengers. The court below held that the accident had occurred due to negligence of the driver and conductor. That finding of the trial court was confirmed by the Division Bench.

23. In similar circumstances, the High Court of Rajasthan in Ram Chandra and Others Vs. Rajasthan State Road Trans. Corporation and Others, , held:

The expression "arising out of the use of motor vehicle" used in Section 110 of the Motor Vehicles Act has a wide impact. While interpreting the expression, the causal relationship between the "use of the motor vehicle" and the "accident" resulting in the death or permanent disablement is not required to be direct and proximate. Giving the restricted meaning to the expression to confine it to some active movement of the vehicle only, i.e., when the motor vehicle is mobile, would be against the object and intention with which the provisions have been enacted.

24. In similar circumstances, the Kerala High Court in Padmanabhan Nair v. Narayanikutty 1988 ACJ 58 (Kerala), held:

Any accident occurring in the course of user for carriage of passengers, or otherwise, is liable to be compensated through the forum provided u/s 110. This is in accord with the intent of the section, which is to afford speedy, cheap and effective remedy in all cases involving motor vehicles. The basic requirement of such claims is only that it should arise out of the use of motor vehicle.

25. In view of the settled legal position noticed above and for the reasons mentioned supra, I hold that the incident/accident is a "motor vehicle accident" that occurred while the motor vehicle was in use and caused because of the negligence of the employees of the A.P.S.R.T.C. (conductor and driver of the bus) and appellant Corporation is vicariously liable to pay compensation to the claimants in the O.Ps.

26. In the result, these appeals (C.M.A. Nos. 1992, 1997, 1999, 2000 and 2125 of 2000) fail and they are accordingly dismissed. No costs.

C.M.A. Nos. 2617 and 2692 of 1998:

27. These two appeals arise out of the order and decree in O.P. No. 631 of 1993. The claimant in O.P. No. 631 of 1993, Paleti Venkatarao, aged 27 years, sustained severe burn injuries. He filed the O.P. No. 631 of 1993 for a compensation of Rs. 4,00,000 and the Tribunal granted him a compensation of Rs. 1,74,000. Dissatisfied with the quantum of compensation awarded, he filed C.M.A. No. 2692 of 1998.

Aggrieved by the compensation awarded the R.T.C. filed C.M.A. No. 2617 of 1998, against the very same order in O.P. No. 631 of 1993.

28. The appeal, C.M.A. No. 2692 of 1998, is filed by the claimant for enhancement of compensation. There is no need to narrate the facts, as the appellant herein is one of the victims of the same accident/incident. I have already held in the above C.M.A. No. 1992 of 2000, etc., that because of the negligence of the employees of the A.P.S.R.T.C. only the incident took place. Therefore, it is held that the appellant herein sustained injuries because of negligence of employees of A.P.S.R.T.C. since the appellant herein is also one of the victims of the same accident. He suffered with severe burn injuries because of the said incident. In this case, the Tribunal after elaborate consideration of the medical evidence came to the conclusion that the permanent disability suffered by the appellant is 80 per cent. Taking the age of the appellant as 27 years, his monthly salary as Rs. 1,378, the Tribunal arrived at annual income of the appellant as Rs. 16,539. Deducting 1/3rd therefrom for the personal expenses of the appellant (Rs. 16,539 -Rs. 5,513), the learned Tribunal arrived at the net annual income of the appellant as Rs. 11,024 and applying the multiplier of 17 arrived at the loss of earnings and compensation for permanent disability as Rs. 1,84,486. Since the disability suffered by the appellant is only 80 per cent, the Tribunal calculated the compensation for 80 per cent disability as Rs. 1,50,000.

29. Dissatisfied with the quantum of compensation the claimant in the O.P. filed this appeal, as already stated supra.

30. Learned counsel for the claimant-appellant in C.M.A. No. 2692 of 1998 vehemently contended that there is no reason to deduct 1/3rd from out of the annual income of the claimant-appellant while arriving at the loss of earnings and compensation for disability, in view of the evidence on record, especially the medical evidence.

31. On behalf of the respondent R.T.C. appellant, it is contended that even though the disability suffered by the claimant is stated to be 80 per cent the burns are only 50 per cent. So, the claimant-appellant is entitled to only 50 per cent of the compensation.

32. I am unable to agree with the contention of learned counsel for the R.T.C. Exh. A-3, medical certificate issued by the Medical Board, discloses that the disability suffered by the claimant-appellant is 80 per cent. In the light of the said finding, it is not proper for the court to hold that the percentage of loss of earnings is only 50 per cent.

33. In this case, the claimant-appellant suffered 80 per cent disability besides burn injuries and survived after the incident. He was aged 27 years as on the date of the incident. There is no reason to deduct 1/3rd from the compensation amount arrived at under the head of loss of earnings. In accident cases, the better method of calculating the amount of compensation would be to apply an appropriate multiplier, which is determined taking into consideration the

uncertainties of life and that the amount is being paid in a lump sum by computing future loss of earnings at present value. Once an appropriate multiplier is applied, the amount of compensation is arrived, there is no question of further deduction of such an amount.

34. In injury cases, when the court/Tribunal applies the multiplier method, which is more logical and sound for calculating the compensation, no deduction is permissible on account of lump sum payment or personal expenses for the simple reason that the claimant himself is the victim and he is claiming compensation for actionable negligence on the part of the respondents.

35. In R.D. Hattangadi Vs. M/s. Pest Control (India) Pvt. Ltd. and Others, , while considering the case of an injured, the Hon"ble Apex Court, after considering various factors, did not allow any deduction from future loss of earnings towards personal expenses to be incurred by the injured-claimant. The Apex Court held:

9. Broadly speaking, while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in the future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

36. The difference between injury and death cases is, on account of personal expenses of injured himself, so no amount can be deducted. A specific amount should be added to the loss suffered by the claimant in case of disabled person who is incapable of looking after himself for the rest of his life towards the cost of service either gratuitous or otherwise. I am of the view that in case of personal injury, no further amount need be deducted on account of expenses incurred by the injured-claimant towards his personal expenses when multiplier method is applied for assessment of loss of earnings of the injured-claimant.

37. Therefore, in this case, the compensation has to be calculated without deducting 1/3rd from the earnings of the claimant towards his personal expenses. After multiplying the annual income of the appellant with the multiplier of 17, the disability compensation/loss of earnings has to be arrived at as 80 per cent thereof, thus the loss of earnings come to Rs. 2,24,930 (Rs. 16,539 x 17 x

80/100). Apart from that, Claims Tribunal has awarded only Rs. 15,000 towards pain and suffering. The accident has taken place immediately after the marriage of the appellant. He suffered severe burn injuries. Definitely the appellant had suffered pain, to a great extent, because of the said injuries. So I feel it proper and just to award another sum of Rs. 15,000 under the head of pain and suffering, making it Rs. 30,000. Apart from that for extra nourishment the Tribunal has awarded only Rs. 2,000. In this case the appellant was in hospital for a considerable period and spent considerable amount towards extra nourishment. So another sum of Rs. 3,000 is hereby awarded, making it Rs. 5,000 under extra nourishment. Insofar as the sum of Rs. 2,000 granted towards medical expenses and the sum of Rs. 5,000 granted as attendant charges, they do not require any enhancement and they are hereby confirmed. Thus, the appellant is entitled to a total compensation of Rs. 2,66,930.

38. In the result, the appeal, CM.A. No. 2692 of 1998 filed by the claimant-appellant, is partly allowed as indicated above. The claimant-appellant is entitled to a total compensation of Rs. 2,66,930 with proportionate costs in the O.P. and interest at 12 per cent per annum, from the date of filing of O.P. till realisation. The rest of the claim in this appeal is dismissed. There shall be no order as to costs.

39. For the reasons stated supra the appeal, C.M.A. No. 2617 of 1998 filed by the A.P.S.R.T.C. against the very same order and decree in O.P. No. 631 of 1993, is hereby dismissed. No costs.