
(1989) 01 AP CK 0007
In the Andhra Pradesh High Court
Case No : A.A.O. No. 760 of 1984

A.P.S.R.T. Corporation and another	Vs	APPELLANT
Sravaji Aruna and others		RESPONDENT

Date of Decision : 16-01-1989

Acts Referred:

Evidence Act, 1872 — Section 43
Motor Vehicles Act, 1939 — Section 110B
Penal Code, 1860 (IPC) — Section 304A

Citation : (1991) ACJ 542 : AIR 1990 AP 162 : (1992) 2 ALT 92

Hon'ble Judges : K. Ramasawamy, J

Bench : Single Bench

Advocate : K. Harinath, for the Appellant; B. Subhashan Reddy. Advocate, for the Respondent

Judgement

K. Ramasawamy, J.

1. In an accident that occurred on May 16, 1981 at Gudipet between Mile Stones 241/6 and 241/8, the Appellant-Corporation's Bus APZ 7304 proceeding from Mancherla dashed against two persons by name Venkatarao Scooter Driver and Tirupathirao. Pillion rider who died thereat. The claimants are the widow and children of the deceased Tirupathirao and they laid the claim in a sum of Rs. 1,56,900/-. The Tribunal below awarded a sum of Rs. 1,00,000/- as against which the appeal has been filed. The trump card for the appellants is the judgment of the Criminal Court in C.C. No. 391/81 dated July 13, 1982 on the file of the Judicial First Class Magistrate, Luxesettipet in which the driver of the bus was acquitted of the charge u/s 304A, I.P.C. It was marked as Ex. B-2 in this case. Sri Harinath, learned standing counsel for the Corporation placing reliance thereon has contended that it was prosecution case that the deceased were attempting to overtake the bus which was going ahead of the scooter they dashed against stationed jeep bearing APH 1326 and fell down and came under the wheel of the bus, as a result, the accident had occurred and it is not on account of the driver of the bus, but on account of the rash and negligent driving of the

deceased. Therefore, the Tribunal is unjustified in awarding damages and the case should have been dismissed on the ground that the driver of the bus has not been established to have been driving the bus rashly and negligently. It is also contended that the judgment of the criminal court recording the acquittal of the accused (driver) for the offence u/s 304A, I.P.C. has become final. The question, therefore, is whether the Tribunal is justified in not giving primacy to the findings recorded in that regard. It is no doubt true that in the above criminal case, the Criminal Court acquitted the driver for the offence u/s 304A, I.P.C. In that, the case set up by the prosecution was that the deceased were trying to overtake the bus. On the other hand the specific case now set up and the evidence adduced in proof thereof is that both the deceased were going on the scooter and the Corporation bus was coming behind and hit against them and it was on account of the rash and negligent driving of the driver of the bus, and as a result of the hit, both the deceased fell under the wheels of the bus. This evidence was accepted and on the basis of the evidence, the Tribunal below was not inclined to place reliance on the findings recorded by the Criminal Court in the above C.C. It is now well settled that the judgment in the Criminal Court is not conclusive. It is open to the claimants to adduce evidence aliunde de hors the finding that the accident had occurred as a result of the rash and negligent driving of the driver of the bus. In this regard the evidence adduced is that of P.Ws. 1 and 2 who are the direct witnesses to the occurrence. It is no doubt true as found in the judgment that the F.I.R. was registered and on the basis of the statement made by the first informant who claims to be the direct witness. The evidence of P.Ws. 1 and 2 was considered by the Tribunal below and accepting their evidence, the claimant's claim was accepted. It is no doubt true that P.Ws. 1 and 2 were not examined in the criminal court. But their non-examination in the criminal court does not automatically disentitle the evidence of these witnesses who gave evidence here as direct witnesses, to be rejected outright. It is only a circumstance to be taken into account. But that circumstance alone is not sufficient to reject the evidence into toto. The evidence on record is clear that they have no interest in the deceased and they are the direct witnesses and their evidence is cogent and convincing. Once their evidence is accepted as trustworthy and acceptable, then merely because they were not examined in the Criminal court is nor a ground to throw their evidence overboard. Obviously the Tribunal below considered from this perspective and was not inclined to give primacy of the Judgment acquittal of the accused (driver) u/s 304A, I.P.C. Considered from this perspective, I hold that the Tribunal below has not committed any error in recording that finding, warranting interference.

2. It is next contended that awarding of an amount of Rs. 1,00,000/- is unwarranted. Admittedly the deceased is a graduate. He was working as Field Assistant in the Agricultural Department, and he was aged only 31 years and that he has long years of service with promotional avenue and retirement benefits. He was drawing as on the date of his death, a salary of Rs. 765/- per month. Therefore, deducting 1/3rd of His salary to wards his personal expenses,

the balance amount could be said to be the loss of dependency to the family. Considered from this perspective and the future increments and pensionary benefits, the grant of Rupees 1,00,000/- cannot be said to be unwarranted or illegal. The appeal is accordingly dismissed, but in the circumstances, without costs.

3. Appeal dismissed.