
(2014) 12 AP CK 0001
In the Andhra Pradesh High Court
Case No : M.A.C.M.A. No. 6 of 2007

A.P.S.R.T.C.

APPELLANT

Vs

Borra Ramasubbamma and Others

RESPONDENT

Date of Decision : 17-12-2014

Acts Referred:

Motor Vehicles Act, 1988 — Section 163A, 163-A, 166

Citation : (2015) 4 ALT 149

Hon'ble Judges : B. Siva Sankara Rao, J

Bench : Single Bench

Advocate : P. Vinayaka Swamy, Advocates for the Appellant; M.V.S. Suresh Kumar, Advocates for the Respondent

Judgement

Dr. B. Siva Sankara Rao, J.—This appeal is filed by the A.P.S.R.T.C./respondent to the claim petition, aggrieved by the award dated 23.09.2006 in M.V.O.P. No. 452 of 2003 on the file of Motor Accidents Claims Tribunal-cum-Principal District Judge, Kadapa, maintained by wife, major son, major unmarried daughter and father of the deceased by name B. Obul Reddy, aged more than 45 years as per Ex. X1-service register extract of the deceased also with reference to Ex. A5-Salary certificate, filed the claim petition under Section 166 of the Motor Vehicles Act for Rs. 25 Lakhs since awarded by the Tribunal was Rs. 21,10,000/- with interest at 7.5% p:a, by impugning the same filed the appeal with contentions in grounds of appeal that the Tribunal gravely erred in finding that the accident was the result of rash and negligent driving of the bus driver though there is no fault of the bus driver and it was a vismazer and outcome of fire accident and the Tribunal also erred in awarding such a huge compensation, which is abnormally high and unsustainable and the multiplier "13" taken is also not correct and the claim at best be maintained only under Section 163-A for the motor vehicle bus in use for no fault of bus driver to claim under Section 166 of the Motor Vehicles Act (in brief "the Act") and when such is the case it is the Schedule-II of the Act that is applicable even the annual income is above Rs. 40,000/- under the same analogy. Hence, to reduce the compensation if not to ignore the A.R.S.R.T.C.

2. The learned counsel for the insurer in support of some of the grounds covered by the above submissions orally submitted the other supra by its reiteration.

3. Whereas it is the contention of the learned counsel for the claimants that but for no cross objections, the compensation awarded by the Tribunal is utterly low and for this Court while sitting in appeal there is nothing to interfere. Hence, to allow the appeal.

4. Perused the material on record. The parties are being referred to as arrayed before the Tribunal for convenience sake.

5. Now the points that arise for consideration in the appeal are:

"1. Whether the award of the compensation of Rs. 21,10,000/- by the Tribunal under Section 166 of the Act in favour of the claimants against A.P.S.R.T.C. is unsustainable and it requires to be reduced under Section 163-A of the Act r/w Schedule II or otherwise and if so to what amount and with what observations?

2. To what result?"

POINT-1:

6. One of the eye witnesses to the occurrence viz., when the APSRTC bus bearing No. AP 11Z 387 was proceeding from Hyderabad to Rayachoti, in the transmit at Munagala some of the passengers trying to remove the suitcase of one of the passenger, when that passenger huge suitcase it is when the passenger, the other among miscreants boarded the bus already as passengers with petrol bottles in his hands sprinkled the bottle and set ablaze from which the accident occurred and the deceased was succumbed to more than 90% burnt injuries as per Ex. A3-Post Mortem report. It is the law set in motion giving the F.I.R. about the occurrence that was registered as crime No. 63 of 2002 of Itikyala Police Station after investigation including inquest and Post Mortem examination of the deceased person charge sheet appears filed against the bus driver.

7. Now the core contention from the appellant/APSRTC is whether the claim under Section 166 of the Act is not maintainable. In fact the Apex Court in New India Assurance Company Ltd. Vs. Yadu Sambhaji More and Others, held under Sections 110A and 92 of the Motor Vehicles Act, 1939 with co-related provisions of the new Act for the accident prior to 1988 from collision between the petrol tanker and truck the petrol spread over on the road and set ablaze and the persons gathered to see the occurrence were also exploded, resulting the death held that the claim maintainable under no fault liability as vehicle in use. To that conclusion the Apex Court referred earlier expression in Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More, wherein the tanker turned turtle and fire broke out and injuries occurred as vehicle in use within its meaning to maintain the Motor Vehicles Act claim for compensation.

8. From the above analogy, coming to the facts it is not mere accidental occurrence as under the guise of passengers some of the miscreants, once

entered the bus that too one of them carrying with him petrol bottle and in the transit the miscreants tried to snatch away the suit case having an eye over it of one of the passengers, when that person resisted, the other miscreants of the unlawful assembly with common concert, who was carrying petrol bottles sprinkled the petrol and set ablaze but for the negligence of the driver and conductor in allowing such persons without checking, the accident could not be outcome and as such it is for the fault liability the claim as under Section 166 of the Act is maintainable and it cannot be regarded to adopt Schedule II of the Act as a claim under Section 163-A of the Act that too the income claimed is more than Rs. 40,000/- p.a. for which the claim under Section 163A has no application but for under Section 166 of the Act as per the settled expressions including of the three judges" Bench expression in Reshma Kumari and Others Vs. Madan Mohan and Another, in answering correctness of the proposition in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, . Thus the Tribunal is right in entertaining the claim and deciding under Section 166 of the Act holding that the accident was the result of the negligence of the driver and conductor of the bus for which the deceased passengers for his no fault was set ablaze by some of the miscreant passengers of the bus from negligent allowing by the driver and conductor of the bus.

9. Now, coming to the quantum of compensation awarded is excessive or not concerned, Ex. A5-salary certificate of the deceased shows his gross salary is Rs. 16019.80, of which H.R.A. is Rs. 782.60. After deduction of H.R.A. it comes to Rs. 15,237/-. As per Rajesh and Others Vs. Rajbir Singh and Others, , as the deceased was aged about 45 years, the prospective earnings increase 30% for the persons aged between 45 to 50 years, it comes to Rs. 4,571/- and total earnings comes to Rs. 19,808/- p.m. and Rs. 2,37,696/- p.a. and income tax deduction thereon comes to Rs. 19,696/-, after giving standard deduction and non-taxable limit, then it comes to Rs. 2,18,000/- even multiplied by "13" by taking the age above 46 years. By adding to it Rs. 100,000/- towards loss of consortium, Rs. 25,000/- towards funeral expenses and Rs. 10,000/- towards loss of estate and hence what the Tribunal awarded of Rs. 21,10,000/- is no way excessive to say there is nothing to interfere. Accordingly, point No. 1 is answered.

POINT No. 2:

10. In the result, the appeal is dismissed. There is no order as to costs.

11. Miscellaneous petitions, if any pending in this appeal, shall stand closed.