THE HON'BLE MS. JUSTICE J. UMA DEVI

MACMA NO. 798 OF 2007

JUDGMENT:

Being aggrieved by the order dated 2.2.2007 passed by the Chairman, Motor Accidents Claims Tribunal-cum-Districft Judge, Karimnagar dismissing OP No. 89 of 2005 filed by the petitioners therein claiming compensation in respect of death of Mohd. Jaleel who died in the accident dated 19.12.2003, the present appeal is filed.

The parties will hereinafter be referred to as they are arrayed in the aforementioned OP.

The facts are briefly stated as under,

The petitioner No.1 Smt. Nuzhath Fatima is the wife, petitioners 2 and 3 are the minor children and the petitioners 4 and 5 are the parents of the deceased Mohd. Jaleel who died in the accident dated 19.12.2003. Their case is that on 16.12.2003 the deceased Mohd. Jaleel had been to Chandrapur from Hyderabad along with Narsimha Ramulu, on his job work at ACC Cement Factory, Chandrapur and attended to his work till 18.12.2003; after completion of his work, he reached the bus stand at Chandrapur to board a bus to go to Hyderabad. While he was waiting for a bus along with Narsimha Ramulu with whom he came to Chandrapur, at about 10.45 P.M. an RTC bus bearing No. AP-11-Z-1156 of Siddipet depot which was proceeding from Gondia to Hyderabad came to the bus stand at Chandrapur. While the passengers were trying to board the bus, the bus was taken to left side in a rash and negligent manner by its driver, as a result it the bus hit the deceased Mohd. Jaleel who was waiting for

the bus, and that he sustained injuries. Immediately after the accident, he was taken to General Hospital, Chandrapur for treatment and there he succumbed to the injuries at about 2.50 A.M. On the complaint given by Narsimha Ramulu who was with the deceased at the relevant point of time, Police of Ramnagar police station registered a case in Cr.No. 444 of 2003 under sections 304-A and 279 IPC against the 1st respondent who was the driver of the offending RTC bus and laid a charge sheet against him before the Chief Judicial Magistrate of Chandrapur. The petitioners further contended that the deceased was hale and healthy prior to the accident and he was aged about 30 years by the date of his death. He did M.Sc. in Environmental Science in Osmania University, Hyderabad. He also did M.Tech in Remote Sensing Center at Birla Institute of Technology and Sciences, Ranchi and worked in Forestry and Ecology Division National Remote Sensing Agency, Balanagar, Hyderabad for some time. He joined Bhagavathi Ana Labs Ltd., Hyderabad in the month of June, 2002 and discharged duties as Senior Environmental Engineer till his death. He was getting monthly salary of Rs.19,800/-, and after deductions he was getting net salary of Rs.15,000/- per month and that he was an income-tax assessee. He was contributing his entire income towards maintenance of the petitioners, and due to his sudden demise, the petitioners were forced to suffer untold mental agony and lost their source of livelihood. The wife of deceased was carrying four months' pregnancy by the date of his death. Had he not died suddenly, he would have survived upto the age of 75 years and earned lakhs of rupees and provided better education to his children and looked after his parents in

their old age. The petitioners therefore laid the claim for compensation as against the respondents 1 and 2 who are the driver and owner of the offending RTC bus bearing No. AP-11-Z-1156.

The case was keenly contested the by the respondents 1 and 2 by filing their respective counters and by adducing evidence. The main contention raised by the 1st respondent against whom the negligence was attributed was that on 19.12.2003 at about 10.30 P.M. the APSRTC bus bearing No. AP-11-Z-1156 which was driven by him was not involved in any accident. Similar contention was raised by the 2nd respondent in its counter.

The petitioners examined one Muddu Narsimhulu as P.W.2. He was the person who gave complaint to the police. He narrated the manner in which the accident occurred and Syed Khaja Hussain, the another witness examined by the petitioners was the spare driver of the offending RTC bus as P.W.4 and Exs.A1 to A6 were the certified copies of Scene of offence panchanama, inquest report, crime detail form, post mortem examination report and charge sheet filed by the petitioners to establish their contention that the accident took place on the night of 19.12.2003 at about 10.45 P.M. at the bus stand of Chandrapur due to hit of the RTC bus bearing No. AP-11-Z-1156 by its driver to the deceased, resulted in his death.

The driver of the bus who disputed the involvement of the RTC bus bearing No. AP-11-Z-1156 driven by him in the accident, examined himself as R.W.1 and that the 2nd respondent-APSRTC examined K. Jagannatham, the Depot Manager of Siddipet as R.W.2. He was officer

who addressed a letter to Depot Manager of Chandrapur and received a reply stating that no accident took place on 19.12.2003. One Abdul Khadeer, the Controller of Chandrapur bus depot was examined by APSRTC as R.W.3 to prove its contention that the RTC bus bearing No. AP-11-Z-1156 was not involved in the accident which was said to be occurred at the bus stand of Chandrapur on the night of 19.12.2003.

The Tribunal, on appreciation of the oral and documentary evidence available in the case record, came to the opinion that the RTC bus bearing No. AP-11-Z-1156 did not cause the accident dated 19.12.2003 and accordingly dismissed the claim of the petitioners as against the respondents 1 and 2.

Being aggrieved by the findings recorded by the Tribunal holding that the evidence of P.W.2 is not inspiring confidence and that no substantial material is produced by the petitioners to establish the involvement of the RTC bus bearing No. AP-11-Z-1156 in the accident said to have taken place on 19.12.2003 at 10.45 P.M. at the bus stand of Chandrapur, the petitioners have preferred this appeal.

The contentions raised by the petitioners in precise are,

That due to improper appreciation of the evidence on record, the Tribunal came to a wrong conclusion that the RTC bus bearing No. AP-11-Z-1156 was not involved in the accident, and that the observation made by the Tribunal that no record whatsoever was produced by the petitioners to establish their plea that P.W.2 accompanied the deceased when he left Hyderabad for Chandrapur on his job work was wholly misconceived. Filing of a complaint by P.W.2 immediately after the

accident before the Police of Ramnagar itself would prove that he was with the deceased at the relevant point of time. As he had been to Chandrapur along with the deceased, he lodged the complaint with the police at Ramnagar. The Tribunal did not appreciate the said crucial aspect in a proper perspective and it was simply carried away by the evidence of R.W.1 and others whose intention was to disown their liability. Simply because of non-mentioning of letter 'Z' in the complaint, the testimony of P.W.2 was disbelieved by the Tribunal though the spare driver deposed in categorical terms about causing of the accident by the bus driven by R.W.1. The evidence of P.W.4 was not taken into consideration by the Tribunal only because of non-production of any documentary proof as to his posting as a spare driver for the offending bus on the date of accident, though it was deposed in clear terms by P.W.2 and P.W.4. The reasonings recorded given by the Tribunal to disbelieve the testimonies of PWs. 2 and 4 were totally misconceived and incorrect. Simply because of minor discrepancies in their evidence regarding as to the timing at which the offending bus reached Chandrapur bus stand which they said in their evidence approximately, the Tribunal held that the evidence given by P.W.2 regarding the time of the accident did not tally with the entries made in SR which was prepared by R.W.1 himself. The Tribunal failed to take note of the fact that P.W.4 was the spare driver for the bus which caused the accident. Though it was admitted by R.W.2 in his evidence in clear terms that two drivers were posted for the bus in question and their names were Komuraiah (R.W.1) and Syed Khaja Hussain (P.W.4), his evidence was not taken into

consideration by the Tribunal by drawing its own presumptions which were contrary to the evidence on record. The Tribunal ought to have placed reliance on the evidence of P.W.2 whose evidence was to the effect that while himself and the deceased were waiting for a bus at Chandrapur bus stand for their return back to Hyderabad, the deceased was hit by the offending bus due to the negligent driving of the same by its driver. Relying on the testimony of R.W.1 which was exculpatory, the Tribunal came to a wrong conclusion that the RTC bus bearing No. AP-11-Z-1156 not involved in the accident. These being the contentions raised by the petitioners to seek to set aside the order impugned in this appeal, it is necessary reappreciate the evidence on record.

P.W.1-Nuzath Fatima, the wife of the deceased is not an eye-witness to the aforementioned accident.

P.W.2-Muddu Narsimha was the person who accompanied the deceased to Chandrapur when he went there to attend to his job work in a cement factory. It was testified by P.W.2 that on 19.12.2003 while he was present along with the deceased at the Chandrapur bus stand and was waiting for a bus to go to Hyderabad along with him after completion of their work in cement factory at about 10.45 P.M., an RTC bus bearing No. AP-11-Z-1156 of Siddipet depot came there and while the bus was being brought towards platform, the driver of the bus suddenly took a left turn and in that process the bus hit the deceased and as a result of it he sustained fatal injuries, and immediately, P.W.2 took him to the General Hospital, Chandrapur and there he succumbed to the injuries on the same day night. He gave a report to the Police of Ramnagar who came to the

hospital and that the said police also recorded his statement. P.W.2 was working as a Technical Assistant in Bhagavathi Ana Labs, Ashoknagar, Hyderabad where the deceased was working as Senior Environmental Engineer.

P.W.4-Syed Khaja Hussain whom the petitioners examined to corroborate the testimony of P.W.2, was the co-driver of R.W.1. His evidence was that on 19.12.2003 he was the spare driver of the offending bus which was proceeding towards Hyderabad from Godiya. He testified that on 19.12.2003 at about 10.30 P.M. when their bus reached Chadrapur bus stand point, he was taking rest on the seat behind the driver's seat and he learnt that a boy sustained injuries and was taken to hospital in an auto.

Though the evidence given by P.Ws. 2 and 4 was indicating the involvement of the RTC bus bearing No. AP-11-Z-1156 in the accident that took place on the night of 19.12.2003 at about 10.30 or 10.45 P.M., the Tribunal disbelieved their testimony and held that the petitioners failed to establish the involvement of the RTC bus bearing No. AP-11-Z-1156 in the accident dated 19.12.2003. It is true that P.W.4 did not speak about the manner in which the accident took place, but his evidence was clear to the effect that he was the spare driver of the offending bus and that his posting as spare driver of the said bus was also spoken to by the Depot Manager of Siddipet whom the management of APSRTC examined as R.W.2. Their evidence would clinchingly establish the fact that P.W.4 was the spare driver for the offending bus. Even as per R.W.2 there were two drivers for the bus in question and they were R.W.1 and

P.W.4. R.W.1 admitted that he obtained bail from the Court, and that he did not take any steps for prosecuting him falsely. Simply because of the reason that the driver of the bus was not apprehended by P.W.2 and others, the evidence given by him as to the manner of the accident cannot be doubted.

Filing of charge sheet against R.W.1 is neither denied nor disputed by him. No evidence is adduced either by R.W.1 or management of APSRTC to disprove Exs.A1 to A6 more particularly Ex.A2, the scene of offence panchanama prepared by the police of Ramnagar. The accident in question as noticed from the contents of Ex.A2 has occurred in the bus stand of Chandrapur and according to the recitals mentioned therein, the deceased Mohd. Jaleel received injuries as he was hit by an RTC bus AP11/1156 from the front side. As per the opinion expressed by the doctor who held autopsy over the dead body of the deceased, he died due to "*vehicular accident with haemorrhagic and shock*". Simply because of non-mentioning of letter 'Z' in the FIR, the respondents have taken the plea that the RTC bus bearing No. AP-11-Z-1156 was not involved in the accident.But the entire evidence on record is clinchingly establishes involvement of offending bus in the accident. There is no dispute as to the fact that R.W.1, the driver of the offending bus has got the bail and charge sheet is filed against him for the offences under Sections 304-A and 279 IPC and that it clearly indicates the involvement of the bus driven by R.W.1 in the accident. The management of RTC which has denied the negligence on the part of R.W.1 has relied on the solitary testimony of R.W.1 which is of exculpatory in nature. Further the

management of APSRTC has not taken any steps to examine any of the passengers of the bus. No credence can be given to the evidence of R.W.3, the Controller of Chandrapur bus stand who seems to have given information to the Depot Manager of Siddipet by his letter as to the non-involvement of the bus in question in the accident. Whatever information furnished by him in his letter is only of hear-say. Since R.Ws. 2 and 3 have not perceived the accident, the only evidence available for the management of RTC to show it as corroborative piece to the evidence of R.W.1 is the evidence of passengers who travelled at the relevant point of time. But no endeavour is made by them to examine them as witnesses. The Tribunal, without proper appreciation of the aforementioned aspects, has simply been swayed away by the evidence of R.W.1 who admittedly has been charge sheeted for the offences under Sections 304-A and 279 IPC.

The aforementioned reasons have made me to reverse the findings recorded by the Tribunal and hold that the accident occurred due to the negligent driving of the RTC bus bearing No. AP-11-Z-1156 by R.W.1.

The Tribunal has undertaken the exercise of determination of compensation to which the petitioners are entitled, though it has taken a different view as against the petitioners so as far as the negligence aspect is concerned. The petitioners have got examined B. Hari Babu as P.W.3 who was the Managing Director of Bhagavathi Ana Labs Limited, Hyderabad where the deceased was working as a Senior Environmental Engineer from June, 2002 onwards to speak about his salary particulars. Ex.A8-salary certificate of the deceased and Ex.A11-service particulars

of the deceased in the company of P.W.3 were produced by the petitioners to establish the fact that the deceased was working as Senior Environmental Engineer in Bhagavathi Ana Labs, Hyderabad of which P.W.3 was the Managing Director. It is deposed by P.W.3 that the deceased did M.Tech from Bits Pilani, Ranchi; he was qualified in remote sensing applications; he acted as a team leader for the project of TIGA Automatic Power Plant in Karnataka and he handled 35 projects, and while working in Bhagavathi Ana Labs, he was drawing salary of Rs.20,000/- per month approximately. The Tribunal, upon consideration of the salary particulars of the deceased mentioned in Ex.A8 which was issued by P.W.3, assessed the compensation at Rs.12,80,064/- under the head of loss of earnings. The Tribunal also has held that the petitioners are entitled to compensation of Rs.15,000/- under the head of loss of consortium, Rs.2,000/- under the head of funeral expenditure, Rs.30,000/- towards non-pecuniary damages, totaling to Rs.13,27,064/-. The compensation so assessed by the Tribunal, in my opinion, is just and reasonable. No evidence is adduced by the respondents disproving the evidence of P.W.3. No substantial grounds are made out by the respondents to show that the Tribunal has wrongly assessed the compensation. The total compensation amount assessed, is payable by the 2nd respondent under whom the 1st respondent was working as driver of the offending bus at the relevant point of time.

In the light of the aforementioned discussion held by me, the appeal filed by the petitioners in OP No. 89 of 2005 deserves to be allowed by setting aside the order in OP No. 89 of 2005 on the file of the

Motor Accidents Claims Tribunal-cum-District Judge, Karimnagar. The compensation amount of Rs.13,27,064/- (Rupees Thirteen Lakhs, Twenty Seven Thousands and Sixty Four only) is payable by the 2nd respondent to the petitioners with interest @ 7.5% per annum from the date of claim petition till the date of realization. The compensation amount shall be apportioned amongst the petitioners as ordered by the Tribunal in its order.

Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

JUSTICE J. UMA DEVI

Dt.27.4.2018
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