

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

M.A.C.M.A.No.1996 of 2008

JUDGMENT:

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Challenging the award and decree dated 18.01.2008 passed in O.P.No.649 of 2007 on the file of the Motor Accidents Claims Tribunal (District Judge), West Godavari at Eluru, the Andhra Pradesh State Road Transport Corporation (hereinafter referred to as "the Corporation), preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "the Act").

For the sake of convenience, the parties will hereinafter be referred to as arrayed in O.P.

The facts in issue are as under:

The claimant filed a petition under Section 166 of the Motor Vehicles Act, claiming compensation of Rs.3,00,000/- for the injuries sustained by him in a road accident that occurred on 08.10.2005. It is stated that on that day at about 7.30 a.m. the claimant along with others boarded an auto bearing No. AP 37 V 9117 at Attili village to go to Velpur. When the said auto was at Ramachandrapuram Village, H/o. Relangi, an RTC bus bearing No.AP 10 Z 4801 driven by the first respondent in a rash and negligent manner came and dashed the auto. As a result of which, the claimant sustained injuries and one passenger succumbed to injuries while shifting to hospital at Tanuku. Since the accident took place due to rash and negligent driving by the first respondent, the second respondent being the employer of the first respondent, the third respondent is the owner-cum-driver of auto in which the claimant was travelling and the fourth respondent is the insurer of the auto, the claim petition was filed making all the respondents jointly and severally

liable to pay compensation.

Respondent Nos.1 and 3 remained *ex parte*.

The second respondent filed counter denying the manner in which the accident took place and also the age, income and avocation of the claimant. It is specifically stated that there was no rashness or negligence on the part of the driver of the bus and that there was contributory negligence on the part of the third respondent. In any event it is stated that the claim made is excessive and exorbitant.

The fourth respondent filed counter denying the manner in which the accident took place and also the age, income and avocation of the claimant. It is specifically stated that there was no rash and negligence on the part of the third respondent and as per the F.I.R. and charge sheet the accident occurred only due to the rash and negligent driving of the first respondent. Hence, it is contended that the insurance company is not liable to pay any compensation.

Basing on the above pleadings, the Tribunal framed the following issues:

1. Whether the accident occurred due to rash and negligent driving of the A.P.S.R.T.C. bus bearing No. AP 10 Z 4801, driven by its driver, first respondent?
2. Whether the petitioner is entitled to claim any compensation? If so, what amount, against which of the respondents?
3. To what relief?

In support of their plea, the claimants examined PWs.1 to 3 and also got marked Exs.A1 to A7. On behalf of the respondents, no oral or documentary evidence has been produced.

After analyzing the oral and documentary evidence available on record, the Tribunal held that the accident took place due to the rash and negligent driving by the driver of the RTC bus and accordingly awarded a sum of Rs.1,08,805/- as compensation with interest at 7.5% p.a. from the date of petition till the date of realization for the injuries sustained by the claimant. Challenging the same the Road Transport Corporation filed the present appeal.

The learned counsel for the appellant/Corporation mainly submits that there is any amount of doubt with regard to the manner in which the accident took place. According to him, it is a case of head on collision and there was a contributory negligence on the part of the third respondent. In any event he submits that the compensation awarded to the claimant is on a higher side.

Per contra, the learned counsel for the claimant submits that no oral or documentary evidence has been produced by the Corporation to prove that there was negligence on the part of the auto driver.

As stated earlier the main ground urged by the learned counsel for the Corporation is with regard to the manner in which the accident took place. As seen from the record, the accident took place on 08.10.2005 at about 7.30 a.m. on Tanuku to Attili Road at Ramachandrapuram village. On that day the claimant boarded auto bearing No. AP 37 V 9117 at Attili in order to go to Velpur, when the auto reached at the said place, one RTC bus bearing No. AP 10 Z 4801 driven by the first respondent in a rash and negligent manner and dashed the auto. As a result of which, the claimant sustained injuries. PW.1 in his evidence deposed about the manner in which the accident took place. He categorically stated that the accident occurred only due to the rash and negligent driving of the driver of

the bus and the same was reflected in Ex.A1 a copy of the First Information Report. The evidence of PW.1 also gets corroboration from the contents of the charge sheet (Ex.A4) filed by the police against the driver of the bus.

It is to be seen that the Corporation has not adduced either oral or documentary evidence to prove that there was contributory negligence on the part of the auto driver. Even the driver of the bus who was present at the time of accident was not examined to prove the negligence on the part of the auto driver. In the absence of any evidence to prove the same, it cannot be said that there was contributory negligence on the part of the driver of the auto. Hence, the argument of the learned counsel for the appellant cannot be accepted. Having regard to the nature of injuries, it cannot be said that the quantum of compensation is on a higher side. Infact, the counsel for the appellant did not press for the same.

For the aforesaid reasons, I am of the view that there are no merits in the appeal and the same is liable to be dismissed.

Accordingly, the appeal is dismissed confirming the award dated 18.01.2008 passed in O.P.No.649 of 2007 on the file of the Motor Accidents Claims Tribunal (District Judge), West Godavari at Elugu. There shall be no order as to costs.

The miscellaneous petitions, if any pending, shall stand closed.

C. PRAVEEN KUMAR, J

11.08.2015

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