

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.388 OF 2010

And

CROSS OBJECTIONS (S.R.) No.35576 Of 2014

-

-
COMMON JUDGMENT:

-
_____ This appeal is preferred by the appellant/respondent – Corporation assailing the judgment and award, dated 11.12.2009 passed in M.V.O.P.No.167 of 2006 on the file of the I Additional District Judge-cum-Motor Accidents Claims Tribunal, Nellore (for short, 'the Tribunal').

_____ The respondent/petitioner filed cross-objections challenging the quantum of compensation awarded to him.

2. _____ For the sake of convenience, the parties are hereinafter referred to as they are arrayed in the O.P. before the Tribunal.

3. _____ The facts leading to filing of the present appeal are, briefly, as follows:

_____ On 12.07.2005, the petitioner boarded a private bus at his native place to go to Nellore. When the bus reached near 4th Town Police Station, Nellore, the driver of the R.T.C. bus bearing No.A.P.10.Z.8667 (for short, 'the crime vehicle') had driven the same in a rash and negligent manner and hit the private bus. The Station House Officer, South Traffic Police Station, Nellore registered a case in Crime No.89 of 2005 for the offence punishable under Section 338 I.P.C. against the driver of the crime vehicle. Due to accident, the petitioner sustained grievous injuries and took treatment as in-patient for long time and spent huge amount towards medicines. Due to injury to elbow, the petitioner lost his earnings. Hence, the petitioner filed the petition claiming compensation of Rs.2,40,000/-. The respondent - Corporation is vicariously liable for the wrongful acts done by its employee.

-

4. _____ The respondent – Corporation filed counter denying all the

averments made in the petition *inter alia* contending that the accident occurred due to the rash and negligent act of the petitioner as well as the driver of the private bus and there was no negligence on the part of the driver of the crime vehicle. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

-

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

- (i) Whether the pleaded accident occurred on account of the rash and negligent driving of the R.T.C. bus bearing No.AP.10.Z.8667 by its driver and whether it resulted injuries to the petitioner?
- (ii) Whether the petitioner is entitled for compensation, if so, to what amount?
- (iii) To what relief?

-

-

6. During the course of trial, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A.1 to A.45, and Ex.C.1 were marked. On behalf of the respondent, RW.1 was examined and no documents were marked.

-

7. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the crime vehicle and allowed the petition in part by awarding compensation of Rs.1,04,100/- against the claim of Rs.2,40,000/-.

-

8. Feeling aggrieved by the judgment and award of the Tribunal, the respondent – Corporation filed the regular appeal and the petitioner - claimant filed the cross-objections.

-

9. The learned counsel for the petitioner submitted that the Tribunal awarded meagre amount of compensation. He further submitted that the Tribunal failed to consider that the petitioner incurred permanent

disability.

-

10. The learned Standing Counsel for the respondent – Corporation submitted that the Tribunal failed to consider that the accident occurred due to the negligence of the private bus driver as well as the wrongful act of the petitioner. He further submitted that the amount of compensation awarded under various heads is excessive and exorbitant.

-

11. Basing on the rival contentions of both the counsel, the following points are arising for consideration in this appeal:

1. Whether the accident occurred due to the rash and negligent driving of the driver of the crime vehicle or not?

-

2. Whether the compensation awarded under various heads by the Tribunal is fair, just and reasonable or not?

-

-

-

12. **Point No.1:**

To prove the manner of the accident, the petitioner examined himself as PW.1 and got marked Exs.A.1 and A.2. To disprove the manner of the accident as pleaded by the petitioner, the driver of the crime vehicle was himself examined as RW.1. A perusal of the testimony of PW.1 and RW.1 reveals that the unfortunate accident occurred on 12.07.2005 near 4th Town Police Station, Nellore. As per the testimony of PW.1, the driver of the crime vehicle had driven the same in a rash and negligent manner and hit the private bus. As per the testimony of RW.1, the driver of the private bus had driven the same in a rash and negligent manner due to which, the accident occurred. He further deposed that the petitioner rest his right hand on the window, which resulted in injuries to him. PW.1 and RW.1, being interested witnesses, the possibility of distortion of the facts so as to substantiate their stand cannot be ruled out completely. The fact remains that as on the date of accident, the petitioner was travelling in the private bus and RW.1 had driven the crime vehicle. In the cross-examination of PW.1, nothing is elicited to shake his

testimony so far as the manner of the accident is concerned. If really the accident occurred due to the rash and negligent driving of the driver of the private bus, what prevented the respondent – Corporation or RW.1 to lodge a complaint to the police? Of course, mere non-registration of the criminal case against driver of another vehicle by itself is not a valid ground to fasten the liability on the driver of the crime vehicle. However, the Tribunal or the Court has to take into consideration the various documents filed by both the parties in order to arrive at a just and reasonable conclusion. As per the recitals of Exs.A.1 – F.I.R. and A.2 – charge sheet, the accident occurred due to the rash and negligent driving of the driver of the crime vehicle. The oral testimony of PW.1 is supported by the recitals of Exs.A.1 and A.2. The oral testimony of RW.1 is not supported by any documentary evidence. The Tribunal, in para No.8 of the impugned judgment, made an observation that generally, the passengers used to rest their hands on the window of the bus. It is the duty of the drivers of the vehicles to visualise the ground realities. Admittedly, the petitioner is no way responsible to cause the accident. In such circumstances, the question of fixing of contributory negligence on the part of the petitioner does not arise. Basing on the material available on record, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the crime vehicle, which resulted in injuries to the petitioner. The Tribunal has assigned cogent and valid reasons to its findings. There are no grounds much less valid grounds to interfere with the well considered judgment and award of the Tribunal so far as the manner of the accident and the *factum* of sustaining injuries by the petitioner are concerned.

13. Point No.2:

Learned counsel for the petitioner submitted that the Tribunal awarded meagre amount of compensation whereas the learned Standing Counsel for the respondent - Corporation submitted that the amount of compensation awarded by the Tribunal is on higher side. As seen from the testimony of PW.1, he sustained injuries in the road accident and took

treatment as inpatient. Whatever deposed by PW.1 is supported by the oral testimony of PW.2. A perusal of Exs.A.3 and A.4 reveals the nature of the injuries sustained by the petitioner. The petitioner took treatment as in-patient from 09.11.2005 to 20.11.2005 and 20.01.2006 to 18.04.2006. Taking into consideration the nature of the injuries sustained by the petitioner, the Tribunal awarded an amount of Rs.30,000/- towards pain and suffering. I am of the considered view that awarding of an amount of Rs.30,000/- towards pain and suffering is not on higher side. The Tribunal also awarded an amount of Rs.8,000/- towards extra nourishment, incidental and transport expenses. It is a known fact that the relatives of the petitioner might have stayed in the hospital to look after the welfare of the petitioner. In such circumstances, the family members might have spent some amount towards transportation. Awarding of an amount of Rs.8,000/- towards extra nourishment, incidental and transport expenses is not on higher side. The Tribunal awarded an amount of Rs.31,100/- towards medicines. The petitioner has filed the bills to a tune of Rs.31,076/-. The Tribunal rightly considered the medical bills and awarded an amount of Rs.31,100/-. The Tribunal awarded an amount of Rs.5,000/- towards loss of earnings. Due to injuries, the petitioner might not have attended to his work for a period of at least three months including the period of treatment. Hence, I am inclined to award an amount of Rs.15,000/- towards loss of earnings instead of Rs.5,000/-.

-

14. As per the testimony of PW.1, he incurred disability to an extent of 30%. As per the testimony of PW.2, the petitioner incurred 30% disability to his right elbow. It is needless to say that a functional disability cannot be equated with loss of earning capacity. The percentage of the functional disability may be confined to only one part of limb of the body. Even as per the testimony of PW.2, due to stiffness of the elbow, the petitioner incurred 30% disability. If really the petitioner incurred disability, what prevented him to appear before the Medical Board and obtain a disability certificate? The fact remains that PW.2 has not issued any disability certificate. Even assuming, but not admitting, that the

petitioner incurred 30% disability to the right elbow, the same may not affect his earning capacity. However, due to stiffness of the right elbow, the petitioner may not enjoy his life like other persons. It appears that the Tribunal, taking into consideration all these aspects, granted an amount of Rs.30,000/- towards partial permanent disability. Viewed from any angle, awarding of an amount of Rs.30,000/- is justified.

-

15. In the light of the foregoing discussion, I am unable to accede to the contention of the learned Standing Counsel for the respondent – Corporation that the amount of compensation awarded by the Tribunal is on higher side. Thus, the amount of compensation to which the petitioner is entitled to under various heads is as follows:

<u>01.</u>	<u>Pain and suffering</u>	<u>Rs.</u> <u>30,000/-</u>
<u>02.</u>	<u>For extra nourishment, incidental and transport expenses</u>	<u>Rs. 8,000/-</u>
<u>03.</u>	<u>For medical expenses</u>	<u>Rs. 31,100/-</u>
<u>04.</u>	<u>Loss of income for three months</u>	<u>Rs. 15,000/-</u>
<u>05.</u>	<u>Towards partial permanent disability</u>	<u>Rs. 30,000/-</u>
<u>-</u>	<u>Total:</u>	<u>Rs.1,14,100/-</u>

-

The respondent – Corporation is vicariously liable for the wrongful acts done by its employee during the course of employment.

-

16. In the result, MACMA No.388 of 2010 is dismissed. Cross Objections (SR) No.35576 of 2014 is allowed in part by enhancing the compensation from Rs.1,04,100/- to Rs.1,14,100/-. The respondent- corporation shall pay the compensation amount with proportionate costs and interest at 7.5% per annum from the date of petition till realisation within a period of two months from the date of receipt of a copy of this order.

17. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

20th February, 2015

lvd

-

-