

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

M.A.C.M.A. Nos.1257 and 3805 of 2009

COMMON JUDGMENT:

Aggrieved by the Award dated 08.08.2008 in OP No.1064 of 2006 passed by the Chairman, MACT–cum-Chief Judge, City Civil Courts, Hyderabad (for short 'the Tribunal') both the claimant and APSRTC preferred MACMA Nos.1257 of 2009 and 3805 of 2009 respectively.

Since both the appeals arise out of same award, they are disposed of by this common judgment. The parties in both the appeals are referred as they arrayed before the lower Tribunal.

2) The factual matrix of the case is thus:

a) On 28.02.2006 at about 9.30 AM when the claimant was travelling in APSRTC bus bearing No.AP 9 Z 9908 from Warasiguda to ECIL and when the said bus reached near ECIL bus stop, while the claimant was still alighting from the bus, the driver of the bus suddenly applied breaks, due to which claimant fell down and sustained grievous injuries. It is averred that the accident was occurred due to the rash and negligent driving by the driver of the offending bus. On these pleas, the claimant filed O.P.No.1064 of 2006 against the respondents/APSRTC and claimed Rs10,00,0000/- as compensation under different heads mentioned in the OP.

b) Respondents 1 and 2/APSRTC filed counter and denied all the material averments made in the claim petition and urged to put the claimant to strict proof of the same. Respondents further contend that claimant himself was at fault as he tried to get down from the moving bus and there is no negligence on the part of driver of the bus. Finally,

they contended that the compensation claimed is highly excessive and exorbitant and prayed to dismiss the OP.

c) During trial, PWs.1 to 4 were examined and Exs.A1 to A13 were marked on behalf of claimant. No oral or documentary evidence was adduced on behalf of respondents.

d) A perusal of the award would show that the Tribunal having regard to the oral evidence of PW1 coupled with Ex.A1—FIR and Ex.A2—charge sheet, has held that the APSRTC bus driver was responsible for the accident. So far as quantum of compensation is concerned, the Tribunal awarded total compensation of Rs.2,63,000/- with proportionate costs and interest at 7.5% p.a. under different heads as follows:

Pain and suffering	Rs. 20,000-00
Extra nourishment	Rs. 10,000-00
Medical expenses	Rs. 12,000-00
Loss of income	Rs. 15,000-00
Disability at 10%	Rs. 73,440-00
Attendant charges & Transport charges	Rs. 10,000-00
Future medical expenses for for replacement of hip joint	Rs.1,00,000-00
Loss of amenities of life	Rs. 10,000-00
Loss of expectation of life	Rs. 12,516-00

Total Rs.2,62,956-00

Rounded to Rs.**2,63,000-00**

Hence the appeals by the claimant on the ground of inadequacy of compensation and APSRTC on the ground of its exorbitance.

3) Heard arguments of Sri K.Jagathpal Reddy, learned counsel for appellant/claimant in MACMANo.1257 of 2009 and respondent in MACMANo.3805 of 2009. Sri K.Madhava Reddy, learned counsel for respondents/APSRTC in MACMANo.1257 of 2009 and for appellants

in MACMA No.3805 of 2009.

4a) Challenging the award, learned counsel for respondent/APSRTC firstly argued that the Tribunal erred in holding that bus driver was responsible for the accident though claimant failed to establish the fault of the driver. He submitted that there were divergent versions in the claim petition and in the evidence of PW1. In the claim petition he mentioned as if driver suddenly applied breaks and due to the jerks he fell down, whereas in the evidence he stated that while he was getting down the bus the driver suddenly started the bus and due to jerks he fell down and therefore, there is inconsistency in his version. Further, the claimant has not examined any independent witness to prove the fault of bus driver. Considering all these aspects, he argued, Tribunal ought to have held that bus driver was not responsible for the accident and on the other hand, the claimant himself was at fault as he tried to get down from the moving bus or atleast Tribunal should have held claimant also contributed for the accident.

b) Secondly, he argued that when it is the opinion of the doctor that on replacement of hipbone the claimant can lead normal life, the Tribunal ought not to have awarded any compensation for loss of earning power by taking his disability at 10%. He argued that when the Tribunal awarded Rs.1 lakh for replacement of hipbone and when the doctor opined that claimant can lead normal life after replacement surgery, the question of claimant suffering any disability thereafter and losing any income does not arise.

c) Nextly, he argued that the Tribunal erred in awarding Rs.1 lakh to meet the expenditure for hip replacement. He submitted that there is no proper basis for awarding the said amount. He thus prayed to allow

the appeal filed by APSRTC and dismiss the counter appeal filed by the claimant.

5a) Per contra, learned counsel for appellant/claimant while criticizing the award as inadequate, firstly argued that Tribunal grossly erred in awarding a meager amount of Rs.1 lakh for hip replacement though as per Ex.A13—estimate and evidence of PW3 the required expenditure is Rs.2,90,000/-.

b) Secondly, learned counsel argued that Tribunal erred in fixing disability of the claimant at 10% though disability certified under Ex.A11—certificate issued by Medical Board and as spoken by PW3 is 50%.

c) Nextly, learned counsel argued that Tribunal failed to take into consideration the future prospects of the claimant while awarding compensation for loss of earning power due to disability. Due to this, he argued, compensation was drastically reduced. He thus prayed to allow his appeal and dismiss the appeal filed by APSRTC.

6) In the light of above arguments, the point for determination in these two appeals is:

“Whether the award passed by the Tribunal is factually and legally sustainable?”

7) **POINT:** Accident, involvement of RTC bus bearing No.AP 9Z 9908 and claimant suffering injuries are not in dispute.

a) When the arguments raised by either side are perused, the first and foremost argument on behalf of APSRTC is that fault consequently lies with claimant himself, as he tried to get down from a moving bus and fell down. Alternatively, he argued that the Tribunal ought to have fixed atleast contributory negligence on the claimant. Learned counsel for claimant opposed this argument stating that

claimant by cogent evidence established the fault of bus driver.

b) In this context, in the OP claimant pleaded that while he was travelling in the crime bus from Warasiguda to ECIL and when the bus reaching near ECIL bus stop, suddenly the driver applied breaks and due to the jerks the claimant who was coming near to the down stairs to get down at the bus stop, fell down and sustained injuries whereas in the cross-examination he stated that while he was getting down and one of his legs was on the ground, the bus suddenly started and he slipped and fell down in front of back tyre and the bus pulled him upto 4 feet. So, the difference in the pleadings and evidence is that as per pleadings he fell down due to sudden application of breaks whereas as per evidence he fell down when the bus was suddenly started while he was in the process of getting down from the bus. On this minor difference, it is argued as if there is no consistency in his case and on the other hand, he tried to get down from a moving bus and therefore, he was at fault. This argument of the respondent cannot be accepted. Even if both the versions are taken into consideration, it is clear that the claimant fell down while getting down from the bus. The driver ought to have been careful and ought to have allowed all the passengers to get down before starting the bus. There is no evidence that the claimant tried to get down from a moving bus. The respondents did not examine either the bus driver or the conductor who are the best persons to speak about the innocence of driver, if any. On the other hand, the evidence of PW1 coupled with Ex.A2—charge sheet clearly shows that bus driver drove the bus in a rash and negligent manner and he suddenly started the bus while PW1 was still alighting and as such the Tribunal rightly fixed the liability on the bus driver. As already stated, there is no contra evidence from the respondents end to hold that claimant himself was at fault or that he

contributed to the accident.

8) The next aspect is with regard to adequacy of compensation. As per Ex.A5—discharge summary issued by Gandhi Hospital, the claimant suffered bilateral fracture superior and interior pubic rami and acetabulum fracture left with posterior dislocation of left hip and fracture of head femur. For the aforesaid injuries the claimant was treated in Gandhi Hospital, Secunderabad from 28.02.2006 to 04.09.2006 as inpatient. The treatment given to him was that dislocation was reduced under general anesthesia, fracture head of femur was treated and skeletal traction was given for six weeks and Thomas splint was applied. Ex.A6—OP card issued by NIMS Hospital would show that he took treatment there also and he was advised physiotherapy. The claimant took treatment also in BVK Hospital and Sridevi Maternity and Nursing Home.

a) Then PW3—Dr Somasekhar Reddy, MS (Ortho), Apollo Hospital, Hyderabad stated that the claimant was advised for total hip replacement and as per Ex.A13—estimate the claimant has to incur an expenditure of Rs.2,90,000/-. In the cross-examination he stated that petitioner can lead his normal life with some limitations if he undergo hip replacement operation. He further stated that for hip replacement, artificial joint should be replaced and cost would be approximately Rs.1,25,000/- and the patient should stay in the hospital for about 10 days.

b) Then PW4—who is the Assistant Professor (Ortho), Gandhi hospital deposed about Ex.A11—disability certificate. He stated in his cross-examination that Gandhi Hospital is having the facility to conduct hip surgery, if the implant is purchased from outside. The Tribunal considering that there is no evidence for the exact cost of

artificial joint, has awarded Rs.1 lakh for hip joint replacement surgery.

c) Both the claimant and respondent criticized the said compensation. The claimant argued that amount was inadequate, whereas the respondent/APSRTC contended that amount is on high side. On a perusal of evidence on record, I am of the considered view that compensation is inadequate. It is not in dispute the claimant needs hip replacement surgery and if it is done, the chances of his leading normal life are more. Coming to the details as per evidence of PW4, the said surgery can be performed in the Gandhi Hospital provided the claimant purchases the implant from outside. Whereas as per PW3, if the operation is performed at Apollo Hospital, out of the total estimate of Rs.2,90,000/- the operation charges including the charges of artificial joint will be Rs.1,50,000/-. Hence, if the claimant undertakes surgery in the Gandhi Hospital, he has to purchase the implant and meet other incidental expenditure as the treatment charges will be free. In such a case, the implant cost and incidental charges can be reasonably estimated at Rs.1,50,000/-. Hence, the said amount is awarded towards medical expenditure.

9) The next argument is in respect of compensation for permanent disability. The Tribunal observed that in Ex.A11 the disability of the claimant was certified at 50% taking his present position into consideration, but the same cannot be taken as a permanent disability because of the fact if he undergoes hip replacement surgery, the chances of leading normal life are more but with certain limitations and so the percentage of disability that would remain after operation would be around 10%. On this premise the Tribunal awarded Rs.73,440/- taking his monthly income at Rs.3,600/- and multiplier '17'. This assessment is criticized by the respondent/APSRTC on the contention that with the hip replacement he would lead normal life and there is no

need to award any compensation and by the claimant that the Tribunal ought to have taken full disability because there is no guarantee that the disability will be wiped out with the hip replacement.

a) On appraisal of evidence, I am of the view that the Tribunal was quite right in taking the disability at 10%. As per the evidence of PW3, after hip replacement claimant will lead normal life with some limitations. So, the present disability of 50% will not be totally wiped out but it will be minimized to a great extent. Hence, the Tribunal was right in taking the disability after operation at 10%. Sofaras future prospects are concerned, the Tribunal in para-10 of its judgment has fixed his monthly income at Rs.3,600/- taking his future prospects also. So, the compensation of Rs.73,440/- is just and reasonable by all means.

Thus, the total compensation payable to the claimant can be stated as follows:

Pain and suffering	Rs. 20,000-00
Extra-nourishment	Rs. 10,000-00
Medical expenses	Rs. 12,000-00
Loss of income	Rs. 15,000-00
Disability at 10%	Rs. 73,440-00
Attendant and transport charges	Rs. 10,000-00
Future medical expenses for replacement of hip joint	Rs.1,50,000-00
loss of amenities of life	Rs. 10,000-00
Loss of expectation of life	Rs. 12,516-00
Total	Rs. 3,12,956-00
Rounded to	Rs. 3,13,000-00

So, on a conspectus of facts and evidence compensation is enhanced by Rs.**50,000/-** (Rs.3,13,000/- minus Rs.2,63,000/-)

10) In the result, both the appeals are ordered as follows:

- i) MACMA No.3805 of 2009 filed by APSRTC is dismissed.
- ii) MACMA No.1257 of 2009 filed by claimant is partly allowed and compensation is enhanced from Rs.2,63,000/- to Rs.3,13,000/-.
- iii) The APSRTC shall deposit the said compensation amount with proportionate costs and interest @ 7.5% per annum from the date of OP till the date of realization within two months from the date of this judgment, failing which execution can be taken out against it.
- iv) No order as to costs in these appeals.

As a sequel, miscellaneous applications pending, if any, in these appeals shall stand closed.

U. DURGA PRASAD RAO, J

Date: 01.10.2015

Murthy