

THE HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

C.M.A.No.4311 of 2004

JUDGMENT:

The injured-claimant, who is none other than the driver of DCM Van bearing registration No.AP 22T 3903 belonging to the 1st respondent-owner and insured with the 2nd respondent-insurer, maintained the claim against them and also against the 3rd respondent-A.P. State Road Transport Corporation, with the averments that, while he was proceeding as driver of DCM Van towards Hyderabad, near Manopadu village on N.H.No.9 at about 12.00 in the mid night, R.T.C. Bus bearing registration No.AP 10Z 5620 coming in opposite direction dashed to one lorry, which inturn hit DCM Van driven by the injured-claimant, from which he sustained severe injuries, and by claiming that the accident was sheer negligence of the bus driver of the 3rd respondent-A.P.S.R.T.C., claimed compensation of Rs.2,50,000/- under Section 166 of the Motor Vehicles Act, 1988, without impleading the offending lorry owner or driver or insurer and without even claiming as '*in the course of employment*' under the Workmens' Compensation Act against respondent Nos.1 and 2, but for with the main thrust on respondent No.3 for the negligence of driver of the bus. After contest, the Tribunal vide order and decree dated 5.7.2001 in O.P.No.1069 of 1998, held that the accident was mainly the result of the rash and negligent driving by the driver of the bus belonging to the 3rd respondent-A.P.S.R.T.C., however, arrived at a compensation of Rs.1,33,000/-, as against the claim of Rs.2,50,000/-, with interest at 9% per annum, from the evidence of P.W.1 injured, supported by Exs.A.1 to A.5, which include Ex.A.2 Discharge Card dated 25.9.1998 issued by the Osmania General Hospital, Hyderabad, Ex.A.3 Bunch of 79 Medical Bills for about 30,000/-, and Ex.A.5 two X-Ray Films, with observations that there was a skin grafting and in the lower limb, there was no proper fusion of bones and even after removal of rods, the loose bones are shaking and the injured is having a curvy structure below the right knee with lot of swelling and a big scar above the ankle region and the claimant has spent

Rs.30,000/- and suffered loss of earnings at Rs.2,200/- per month with disability and sustained Grade-III composite fracture of bone at Tibia right lower 1/3, fracture of shaft and femur external fixation.

2. Undisputedly, no doctor was examined and no disability certificate is filed. Even in the discharge summary, there is no disability of permanent nature indicated. However, the Tribunal, with the observations that are projected supra, having fresh in mind from the injured present before the Tribunal and deposed, awarded a compensation of Rs.1,20,000/-, in all, for the injuries with partial permanent disability, besides Rs.13,000/- towards medical expenses as against the claim of Rs.30,000/-.

3. It is impugning the same, the present appeal is maintained with the contentions that, the Tribunal gravely erred in not awarding transport charges, attendant charges and loss of earnings, and not indicated for granting a lumpsum amount of compensation, and there is no basis to ignore the medical bills of 79 in number filed under Ex.A.3 nearly for a sum of Rs.30,000/- and in taking only for Rs.13,000/-, and not awarding loss of earnings during the period of treatment and hence to allow the claim, as prayed for, and same is the submission of the learned counsel for the appellant-claimant in support of the contentions in the grounds of appeal.

4. Whereas, it is the contention of Sri K. Kishore Kumar Reddy, learned Standing Counsel for the 2nd respondent-Insurer i.e., United India Insurance Company Limited, that there is nothing to interfere with the findings of the Tribunal in exonerating the insurer of the DCM Van, to which the injured-claimant was driver, but for the accident was the fault of the driver of the 3rd respondent-A.P.S.R.T.C., who was liable, and if at all to enhance, it is only against the 3rd respondent.

5. It is the contention of Sri G.S. Prakasa Rao, learned Standing Counsel for the 3rd respondent-A.P.S.R.T.C., that the award of the Tribunal itself is excessive with no proof or medical evidence of disability and, for this Court, while sitting in appeal, there is nothing to interfere, but for to reduce the rate of interest and thereby sought for dismissal of the appeal.

6. Perused the material on record. The parties are being referred to as

they are arrayed before the Tribunal.

7. Now the points that arise for consideration are:--

(i) Whether the compensation awarded by the Tribunal is utterly low, but to enhance the same and, if so, with what amount and with what observations and against whom? and

(ii) To what result?

In re. Point No.1 :

8. The evidence on record, particularly of P.W.1, with reference to Ex.A.1 – Xerox copy of F.I.R., clearly speaks that it is because of the fault of the driver of the bus belonging to the 3rd respondent-A.P.S.R.T.C., the accident resulted, since the bus dashed the lorry, which inturn dashed DCM Van that was driven by the injured-claimant, which belongs to the 1st respondent-owner and insured with the 2nd respondent-insurer and the Tribunal also therefrom for no oath against the oath from the driver of the bus also, gave a clear finding from the material that is available on record, supported by reasons, that the accident was outcome of the negligence of the driver of the bus belonging to the 3rd respondent-A.P.S.R.T.C. Against that finding, to interfere, there is nothing, even of cross-objections by A.P.S.R.T.C., much less on the quantum awarded against it, and that was attained finality, even the lorry, which dashed DCM Van driven by the injured-claimant, was not made a party of its driver, owner or insurer, but for the A.P.S.R.T.C., that dashed the lorry, which inturn, dashed the DCM Van driven by the injured-claimant.

9. Now, coming to the quantum of compensation, when the Tribunal has recorded the evidence of the injured-claimant as P.W.1 and made observations in the open Court, from what it found from the contentions of the injured, in awarding Rs.1,20,000/- for the pain and sufferings to the injuries with partial permanent disability, even against that quantum, there is nothing to interfere.

10. Coming to the medical bills, 79 medical bills were filed for nearly Rs.30,000/-, to award only Rs.13,000/-, so also for the fact that the treatment in Government Hospital is free of cost, but for the medical expenditure incurred, there is nothing more to interfere.

11. However, the Tribunal did not award loss of earnings, transport charges, attendant charges and extra-nourishment and thereby it requires to award a minimum of Rs.25,000/-, including loss of earnings for three months, transport and attendant charges and extra-nourishment, thereby it requires enhancement from Rs.1,33,000/- to Rs.1,58,000/- and to reduce the rate of interest from 9% to 7.5% per annum from today till the date of realization, while retaining 9% per annum from the date of petition till date.

12. Accordingly, point No.1 for consideration is answered.

In re. Point No.2 :

13. Accordingly and in the result, the appeal is partly allowed. There is no order as to costs.

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

Dr. JUSTICE B. SIVA SANKARA RAO

29.04.2015.

Msr

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