

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

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M.A.C.M.A.No.826 of 2009

JUDGMENT:

This appeal is preferred under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') by the petitioner challenging the judgment and award, dated 25.09.2007 passed in O.P.No.160 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal (District Judge), Nizamabad (for short, 'the Tribunal').

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 appeal, in brief, are as follows:

On 02.10.2005, at about 10:00 PM, when the petitioner along with Ganapuram Rajaiah reached National Highway No.7 on a Bajaj Chetak scooter bearing No.AP-25/C-7290, the driver of the APSRTC bus had driven the same in a rash and negligent manner and dashed the scooter coming from opposite direction. Due to accident, the petitioner sustained injuries on various parts of the body. The Station House Officer, Devanpally registered a case in Crime No.99 of 2005 under Section 337 I.P.C. By the time of accident, the petitioner was aged about 28 years and used to earn Rs.5,000/- per month as jeep driver. Due to injuries, the petitioner could not attend to his work thereby, lost his income. Respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner. Hence, the petition is filed under Section 166 (1) (a) of the Act claiming compensation of Rs.1,50,000/-.

4. The respondents filed written statement denying all the material averments made in the petition *inter alia* contending that the accident occurred due to the rash and negligent driving of the rider of the scooter and there was no negligence on the part of the RTC bus, and

the petitioner sustained simple injuries. 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:-

1. Whether the accident has taken place due to rash and negligent driving of the APSRTC Hi Tech bus bearing No.AP-11/Z-5305 by its driver?
2. Whether the petitioner is entitled for compensation? If so, to what just amount and against whom?
3. To what relief?

6. During the course of trial, on behalf of the petitioner, PWs.1 and 2 were examined and Exs.A.1 to A.7 were marked. On behalf of the respondents, RW.1 was examined and Exs.B.1 to B.3 were marked.

7. The Tribunal, on appraisal of material available on record, arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the RTC bus and allowed the petition in part by awarding compensation of Rs.32,000/-.

8. Feeling aggrieved by the judgment and award of the Tribunal, the petitioner/claimant preferred the present appeal.

9. Heard Sri Ch.Janardhan Reddy, the learned counsel for the appellant/petitioner and Sri N.Vasudeva Reddy, the learned Standing Counsel for the respondent – APSRTC.

10. The only contention of the learned counsel for the appellant/petitioner is that the Tribunal has not considered the material available on record and awarded meagre amount.

11. The learned Standing Counsel for the respondents submitted that the Tribunal awarded just and reasonable compensation and

therefore, there are no grounds to interfere.

12. Now the point that arises for consideration in this appeal is:

Whether the Tribunal has awarded fair, just and reasonable compensation to the petitioner or not?

13. **Point:**

While deciding issue No.1, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the RTC bus. The respondent – Corporation did not choose to file an appeal or cross objections assailing the finding of the Tribunal on issue No.1. The finding recorded by the Tribunal on issue No.1 became final. In such circumstances, there is no need to discuss this issue elaborately in the appeal. 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 RTC bus.

14. As per the testimony of PW.1, he sustained fracture to right leg and injuries on various parts of the body and took treatment as in-patient in Government Hospital, Kamareddy. As per the testimony of PW.2 – Doctor, the petitioner sustained two simple injuries and fracture to both bones of lower right leg. A perusal of Exs.A.4 – Wound Certificate and A.5 – discharge card reveals that the petitioner sustained one fracture and two simple injuries. The Tribunal awarded an amount of Rs.29,000/- towards pain and suffering. The Tribunal rightly considered the oral testimony of PWs.1 and 2 and Exs.A.4 to A.7 and awarded an amount of Rs.29,000/-. Viewed from any angle, awarding an amount of Rs.29,000/- under the head “pain and suffering” is quite reasonable. The petitioner claimed an amount of Rs.50,000/- towards medicines and transportation charges. The fact remains that the petitioner did not file even a single scrap of paper to prove that he spent some amount towards medicines. As per the

testimony of PW.2, the petitioner took treatment as in-patient in Gandhi Hospital, Secunderabad from 03.10.2005 to 15.10.2005. Even though the petitioner took treatment in Government Hospital, he might have spent some amount for purchase of the medicines and transportation charges.

15. Having regard to the nature of the fracture sustained by the petitioner, I am inclined to award an amount of Rs.5,000/- towards medicines, transportation charges and extra nourishment. By the time of accident, the petitioner was a driver by profession. Due to compound fracture to right leg, the petitioner might not have attended to his work for a period of three months including the treatment period. The Tribunal awarded an amount of Rs.3,000/- towards loss of earnings for a period of one month. In case of compound fracture, it may not be possible for anyone to drive the jeep at least for a period of three months in the best interest of himself and the passengers. A driver may earn at least Rs.4,000/- per month even in the year 2005. Hence, I am inclined to award an amount of Rs.10,000/- towards loss of earnings instead of Rs.3,000/-.

Thus, in all, the amount of compensation to which the petitioner is entitled under various heads is as follows:

Pain and suffering	-----	Rs.29,000/-
For medicines and extra nourishment	-----	Rs. 5,000/-
Loss of earnings	-----	Rs.10,000/-
		=====
Total:	-----	Rs.44,000/-
		=====

16. Therefore, I am of the considered view that the compensation awarded under various heads is just and reasonable to meet the ends of justice.

17. In the result, the Appeal is allowed in part enhancing the quantum of compensation from Rs.32,000/- to Rs.44,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. There shall be no order as to costs.

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

T.SUNIL CHOWDARY, J

Date: 16.02.2015

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