

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No. 901 of 2005

Judgment:

For the burns sustained by the petitioner in a road accident, by the order dated 31.12.2002, a sum of Rs.40,000/- was granted as against the claim of Rs.1,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), in MVOP No.151 of 1999 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge, Guntur (for short 'the Tribunal'), the instant appeal is preferred seeking enhancement of compensation under Section 173 of the Act.

2. For convenience sake, the parties hereinafter referred to as arrayed in the Original Petition before the Tribunal.

3. The facts, in brief, are that on 08.03.1993, the Express RTC bus bearing registration No.AP-9Z-4236 proceeding from Hyderabad and bound to Chilakaluripet reached Narsaraopet at 4.00 AM. Thereafter, from Narsaraopet it started at 4.10 AM and when the bus reached near Vinukonda rail crossing gate at Narsaraopet, two persons stopped the bus and boarded the bus. Then the bus started to go to Chilakaluripet. When the bus reached Kavuru village, fire broke out due to the use of petrol and it ultimately came out that the two persons who entered the bus with petrol cans poured kerosene and lit a matchstick. Due to the fire accident in the bus some persons have lost their lives and some persons sustained severe burns and became disabled. Some of the injured and some of the dependents of the deceased who died in the accident have filed OPs in the Motor Accidents Claims Tribunal, Guntur. The petitioner claiming that, he sustained 50% disability and unable to pursue his occupation of masonry, laid the claim for Rs.1,50,000/- towards compensation.

4. Before the Tribunal the respondent – Corporation filed a counter resisting the claim raising various pleas.

5. The Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner, besides examining himself as PW.1, examined Dr. B.G. Sugunavathi as PW.2 and marked Exs.A1 to A4. On behalf of the respondent – Corporation none were examined and no documents were filed.

6. The Tribunal, on issue No.1, held that due to the negligence of the driver and conductor of the respondent – Corporation, the accident had occurred, thus, held it in favour of the petitioner.

7. On issue No.2, appreciating the evidence of PW.2 and description of injuries mentioned in Ex.A3, however, discarding the percentage of disability at 50% said to have issued by the Medical Board under Ex.A4 and noting that PW.2 - the Medical Officer, examined by the petitioner, has given a positive admission in her cross-examination that the petitioner was able to attend to his work with small complaints, granted a sum of Rs.35,000/- towards burns, Rs.2,000/- towards medical expenses, Rs.1,000/- towards extra nourishment and Rs.2,000/- towards attendant charges. Thus, a total sum of RS.40,000/- was granted as compensation with interest at 9% p.a., thereon.

8. It is the aforesaid order which is under challenge in the instant appeal contending that the Tribunal did not properly appreciate the evidence and without assigning any plausible reasons ignored the disability at 50% sustained by the appellant and his functional disability is 100% since he is unable to do any work and sought to grant balance amount.

9. Heard Sri T. Ramakoteswara Rao, learned counsel for the appellant. No representation for the respondent – Corporation.

10. As seen from the fact-situation, not only the petitioner but also several other passengers along with the petitioner who were travelling in the same bus sustained injuries in the said accident. The Tribunal has disposed of the claims, aggrieved by which the Corporation as well as claim petitioner in MVOP No.631 of 1999 approached this Court seeking to set aside the awards passed by the Tribunal as no negligence can be attributed to it, whereas the appeal of the claim petitioner in CMA No.2692 of 1998 was allowed in part enhancing the compensation from Rs.1,50,000/- granted by the very same Tribunal to Rs.2,66,930/-. The details of other appeals are thus:

11. CMA Nos.2617 of 1998, 2692 of 1998, 1992 of 2000, 1997 of 2000, 1999 of 2000, 2000 of 2000 and 2125 of 2000 arising out of the same accident, concerning which the instant MACMA is preferred by the petitioner, were disposed of by a common order dated 24th April 2001, preferred by the APSRTC and the claimants. So far as CMA Nos.2617 of 1998 and 2692 of 1998 are concerned, they were filed against the order in MVOP No.631 of 1993 by the Corporation and the petitioner respectively and the rest of the appeals were preferred by the Corporation. This Court dismissed the appeals in CMA Nos.1992 of 2000, 1997 of 2000, 1999 of 2000, 2000 of 2000 and 2125 of 2000 preferred by the APSRTC holding that the Corporation is vicariously liable to pay compensation to the claimants in the said OPs. Concerning CMA Nos.2617 of 1998 and 2692 of 1998, the latter CMA preferred by the petitioner was partly allowed determining the compensation at Rs.2,66,930/- by way of enhancement as against Rs.1,50,000/- determined by the Tribunal, where the petitioner suffered permanent disability of 80% and, consequently, the appeal preferred by the APSRTC against the very same order and decree in MVOP No.631 of 1993 in CMA No.2617 of 1998 was dismissed.

12. Turning to the instant appeal, though 50% disability was mentioned in Ex.A4, the concerned doctor was not examined. Certainly, PW.2 is not competent to speak about 50% disability. Even otherwise, as seen from the contents of Ex.A3, only the burns were on limbs of the petitioner and that too skin burns superficially. Therefore, the Tribunal has rightly recorded the finding that 50% disability cannot be taken.

However, keeping in view, the discomfort and inconvenience suffered by the petitioner till the burns were healed and also, keeping in view, the positive admission made by PW.2 that the petitioner has no difficulty in pursuing his masonry profession with small complaints, the amount of Rs.35,000/- granted by the Tribunal is enhanced to Rs.50,000/-. The Tribunal awarded Rs.2,000/- towards medical expenses and the same is confirmed, since there is no convincing material to enhance it. Concerning the amount of Rs.1,000/- granted by the Tribunal towards extra nourishment, the same is enhanced to Rs.5,000/-. Towards attendant charges, the Tribunal has granted Rs.2,000/-, and the same is enhanced to Rs.5,000/- and, towards transportation charges as no amount is granted, a sum of Rs.2,000/- is granted. Thus, the petitioner is totally entitled to a sum of Rs.64,000/- as against Rs.40,000/- granted by the Tribunal. The Tribunal has granted interest at 9% p.a., but, however, it is restricted to 7.5% p.a., on the total amount of Rs.64,000/- in view of the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**.

13. Accordingly, the appeal is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation and reducing the rate of interest as stated supra. There shall be no order as to costs.

14. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand closed.

A. SHANKAR NARAYANA, J

Date: 27.03.2015

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