

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

WEDNESDAY THE THIRD DAY OF DECEMBER
TWO THOUSAND AND FIFTEEN

PRESENT
HONOURABLE SRI JUSTICE S.V. BHATT

MACMA.NO. 1418 OF 2005

—

Between:

Akula Venkataramna ... Appellant

V/s.

A.P.S.R.T.C.
Rep.by its General Manager,
Musheerabad, Hyderabad ... Respondent

Counsel for the appellant : Sri Korapati Subba Rao

Counsel for the Respondents: Sri C.Prakash Reddy

The Court made the following: [order follows]

HONOURABLE SRI JUSTICE S.V. BHATT

MACMA.NO. 1418 OF 2005

-
-

JUDGMENT :

-
-
-

Heard Sri Korapati Subba Rao, learned counsel for the appellant and Sri K. Vijay Babu representing Sri C. Prakash Reddy, learned Standing Counsel for respondent-APSRTC.

2. The Civil Miscellaneous Appeal is at the instance of claimant in MVOP.No. 984 of 1999 in the Court of Motor Accident Claims Tribunal-cum-II-Additional District Judge, Guntur.

3. The claimant by this appeal prays for grant of compensation of Rs.1,10,000/- for the injuries suffered by him in the accident dated 12/6/1999.

4. The circumstances relevant for the disposal of the appeal are as follows:

At about 1:30 p.m. on 12/6/1999 when the claimant was purchasing mangoes on the road side cart, the bus bearing No. AEZ-3627 driven in rash and negligent manner hit the appellant and others standing nearby and caused injuries to these persons. The injuries resulted in 25% permanent partial disability. The

appellant was given first-aid at Community Health Centre, Sattenapalli and was later referred to GGH Guntur for expert care and management. The accident was reported and registered as Crime No.101/99 at Sattenapalli Town Police Station. The appellant is a coolie and earns about Rs.50/- per day. Due to the injuries caused in the accident, she has spent substantial amount for treatment and the appellant has now 25% permanent partial disability and not in a position to earn the daily wage of a worker. The appellant claimed Rs.2,00,000/- towards compensation.

5. The respondent opposed the claim on all fours. The allegations relevant for the purpose of appeal are that the appellant is not a coolie, she is a house wife and it cannot be said that she is earning Rs.50/- per day. The injuries even if assumed to be true are exaggerated to claim excessive compensation. According to the respondent, the injuries are simple in nature. Therefore, firstly it prays for dismissal of the claim and alternatively contends that the compensation claimed is exaggerated and excessive.

6. The Tribunal framed the following issues:

- i) *Whether the accident occurred due to rash and negligent driving of the driver of RTC bus No.AEX-3627 ?*

ii) *To what compensation the petitioner is entitled and from whom?*

iii) *To what relief?*

7. PWs. 1 and 2 are examined and Exs.A-1 to A-6 are marked for the appellant. Sole witness as RW-1 was examined for respondent and no documentary evidence is placed on record.

8. Before examining the claim for compensation, I consider it appropriate to refer to the findings of Tribunal on issue No.1. The Tribunal, upon consideration of totality of circumstances, the place at which the appellant was standing, how the appellant and others were run down, recorded the findings on rash and negligent driving as follows:

“The respondent, in order to disprove the case of the petitioner, examined the driver of the offending RTC bus, as RW-1. RW-1 stated in his evidence that the case filed against him was closed and he was acquitted. But that itself is not a ground in this petition to come to a conclusion that there is no fault on the part of the driver of the offending RTC bus. The acquittal of the criminal case against the driver of the RTC bus is not at all a sole criteria to reject the claim of the petitioner for compensation like this case. Therefore, I have no hesitation to hold that the accident occurred only because of the rash and negligent driving of the driver of the offending RTC bus. This issue is decided against the respondent.”

9. On issue No.2, the Tribunal has accepted Ex.A-3 and the evidence of PWs 1 and 2 to grant lump sum compensation of Rs.20,000/- towards injuries, pain and suffering, medical expenses and extra-nourishment. Hence, the appeal.

10. Learned counsel for the appellant contends that the Tribunal committed serious error in awarding lump sum compensation to the appellant. The appellant pleaded and proved the case by the evidence of PW-2 and Ex.A2 to Ex.A-5. The oral and documentary evidence certainly would go to show that the appellant is entitled for compensation claimed by her in the OP. Learned counsel further submits that 25% permanent partial disability entitles the appellant to claim compensation of Rs.1,35,000/- and the details of such assertion are $\text{Rs.3000} \times \frac{25}{100} = 750$, $750 \times 12 = 9000$ $\times 15 = 1,35,000/-$. Therefore, he prays the court to allow the appeal in its entirety.

11. Learned counsel for the respondent vehemently contends that the case of appellant is that she is a coolie. Except the assertion as coolie, hardly any other evidence is available to accept this plea. He contends that it is difficult to presume that claimant is capable of earning Rs.3,000/- per month. He further

contends that Ex.A3 though refers to 25% permanent partial disability when the same is confronted to PW-2, in the cross-examination PW-2 has clearly admitted that notwithstanding any such permanent partial disability the appellant is capable of attending to her normal chores and consequently he contends that Ex.A-3 cannot be accepted to determine extent of disability at 25%.

12. Now the point for consideration is whether the appellant is entitled for enhancement of compensation, if so, to what extent ?

13. I have perused the material available on record. At the outset, this court is compelled to observe that though the learned Judge has considered each one of the exhibits independently and recorded the evidentiary value while awarding compensation, the learned Judge has concluded by observing that awarding of Rs.20,000/- lump sum compensation is just and proper in the facts and circumstances of the case. In my view, once the appellant satisfactorily establishes the claim, as pleaded, it is the duty of the Tribunal to consider the entitlement of compensation in accordance with law. In my opinion, the said requirement is not

satisfied in the award impugned in the CMA. Therefore, I am of the view that the appellant is entitled for enhancement of compensation.

14. To sum up, the admitted circumstances; namely, the appellant is aged 35 years and in the accident appellant suffered one grievous injury and two simple injuries. As regards grievous injury, the disability certificate [Ex.A3] shows that the appellant now suffers permanent partial disability of 25%. PW-2 has explained the permanent partial disability suffered by appellant.

Having regard to the proof the appellant has placed on record, in the instant appeal I am not in full agreement with Ex.A3.

With a view to balancing the assertion of claim and denial of the respondent and for the purpose of deciding just and proper compensation, I am inclined to treat the permanent partial disability as 20%. Accordingly, $\text{Rs.}3000 \times 20/100 = 600 \times 12 = 7200$, $7200 \times 15 = 1,08,000/-$. Therefore, in my considered view towards permanent partial disability, pain and suffering and loss of income the appellant is entitled to Rs.1,08,000/- as total compensation. In other words, through this determination Rs.88,000/- is enhanced. For the view I have taken, this court

does not propose to consider the claim under other heads. On the enhanced compensation, the appellant is entitled to interest @ 7.5% p.a from the date of petition till the date of deposit. The impugned award is modified accordingly.

15. The appeal is allowed in part as indicated above. No order as to costs.

14. As a sequel, miscellaneous petitions if any, pending in this MACMA shall stand closed.

JUSTICE S.V. BHATT

03/12/2015
Is L

HONOURABLE SRI JUSTICE S.V. BHATT

—

MACMA.NO. 1418 OF 2005

-
-
-

Date: 03/12/2015
Circulation No.55
Court Master: I s L