

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

M.A.C.M.A. No.906 OF 2009

JUDGMENT:

This appeal is preferred by the appellant/respondent – Corporation challenging the judgment and award, dated 11.04.2008 passed in M.V.O.P.No.212 of 2005 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge, Tirupati (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 present appeal are, briefly, as follows:

On 05.10.2004 at about 3:45 AM, the petitioner was waiting at A.P.S.R.T.C. Bus Stand in gate, Tirumala in the meanwhile, the driver of the A.P.S.R.T.C. Bus bearing No.AP 10 Z 9346 had driven the same in a rash and negligent manner and hit the petitioner. The accident occurred due to the rash and negligent driving of the driver of the RTC bus against whom, the Station House Officer of Traffic Police Station, Tirumala registered a case in Crime No.27 of 2004 for the offence punishable under Section 338 I.P.C. By the time of accident, the petitioner was aged about 44 years and used to earn Rs.150/- per day by attending coolie work. Due to accident, the petitioner sustained grievous injuries on both legs. The petitioner took treatment as inpatient from 05.10.2004 to 12.01.2005 in SVRRGG Hospital, Tirupati and spent an amount of Rs.30,000/- towards medicines and treatment. Due to injuries, the petitioner incurred permanent disability and unable to attend the work thereby, lost his income. Hence, the present petition.

4. Respondent - Corporation filed counter denying all the

averments made in the petition *inter alia* contending that the RTC bus reached near Balaji Bus Stand, Tirumala some of the passengers made an attempt to board the running bus and some of the passengers made an attempt to reserve the seat through glass windows. In that process, the petitioner fell down and sustained injuries. There was no rashness or negligence on the part of the driver of the RTC bus to cause the accident. The amount of compensation claimed by the petitioner 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 pleaded accident occurred and if so was it due to fault of the driver of the A.P.S.R.T.C. bus bearing No.AP 10 Z 9349?
- (2) Whether the petitioner suffered injuries in the accident and entitled to compensation and if so, to what amount?
- (3) To what relief?

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6. During the course of trial, on behalf of the petitioner, P.Ws.1 to 4 were examined and Exs.A.1 to A.8 were marked, and Exs.X.1 to X.3 were marked. On behalf of the respondent, RW.1 was examined and no documents were marked.

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7. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the RTC bus which resulted in injuries to the petitioner and allowed the petition in part by awarding compensation of Rs.3,51,303/- with interest at the rate of 7.5% per annum.

8. Feeling aggrieved by the judgment and award of the Tribunal, the respondent - Corporation preferred the present appeal.

9. Heard Sri A.Rama Rao, the learned Standing Counsel for the respondent - Corporation and Sri P.Govind Reddy, the learned counsel for the petitioner.

10. Learned Standing Counsel for the appellant/respondent - Corporation submitted that the Tribunal has not considered the oral testimony of RW.1 in right perspective. He further submitted that the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of the RTC bus is not supported by oral or documentary evidence.

11. Per contra, the learned counsel for the petitioner submitted that the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of the RTC bus is fully supported by oral and documentary evidence. He further submitted that there are no grounds much less valid grounds to interfere with the well considered judgment and award of the Tribunal.

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

Whether there was any negligence on the part of the petitioner to cause the accident or not? if so, to what extent?

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Point:

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13. To prove the manner of the accident, the petitioner examined himself as PW.1 and got marked Exs.A.1 and A.2. To demolish the case of the petitioner, the driver of the RTC bus was examined as RW.1. As per the testimony of PW.1, on 05.10.2004 at about 3:45 AM, he was waiting near in gate of A.P.S.R.T.C. Depot, Tirumala in the meanwhile, the driver of the RTC bus had driven the same in a rash and negligent manner and dashed him. As per the testimony of RW.1, on 05.10.2004 at about

3:45 AM, when the RTC bus reached Balaji Bus Stand, Tirumala, some of the passengers tried to board the bus through glass windows and fell down and sustained injuries. If the testimony of PW.1 is taken into consideration, the accident occurred due to the rash and negligent driving of the driver of the RTC bus. If the testimony of RW.1 is taken into consideration, the petitioner himself fell down and sustained injuries. PW.1 and RW.1, being interested witnesses, the possibility of distortion of the facts cannot be ruled out completely. The fact remains that the petitioner sustained injuries on 05.10.2004 at A.P.S.R.T.C. Balaji Bus Stand, Tirumala. In the cross-examination, PW.1 denied the suggestion that he made an attempt to board the bus through window. While appreciating the oral and documentary evidence, the Tribunal has to take into consideration the ground realities. It is not possible to enter into the RTC bus through glass window. The glass windows are meant for proper ventilation of the passengers of the bus. Normally the passengers may board into the bus through the front or back door depending upon the model of the bus. It is not mentioned in the counter whether the bus in question was having two doors or one door. In the cross-examination, RW.1 in unequivocal terms deposed that the concerned Police registered a case and filed the charge sheet against him. If really there was no negligence on the part of the driver of the RTC bus, what prompted the concerned Station House Officer to file charge sheet against him? The oral testimony of PW.1 is fully supported by the recitals of Exs.A.1 – Certified Copy of F.I.R and A.2 – Certified Copy of charge sheet. Whatever deposed By RW.1 is not supported by any documentary evidence. RW.1, being an employee of A.P.S.R.T.C., the possibility of deposing false at the directions of his superior officers cannot be ruled out. If really there was no negligence on the part of the RW.1 to cause the accident, why the respondent – Corporation suspended him and deferred two increments. This aspect itself lends support to the version of the petitioner. The Tribunal has considered the oral and documentary evidence available on record in

right prospective and arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the RTC bus. The Tribunal has assigned cogent and valid reasons to its findings. There are no grounds much less valid grounds to interfere with the findings recorded by the Tribunal on issue No.1. I am fully agreeing with the findings recorded by the Tribunal on issue No.1.

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14. Hence, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the RTC bus, which resulted in injuries to the petitioner. Therefore,

I am unable to accede to the contention of the learned counsel for the appellant/respondent that the accident occurred due to the rash and negligent driving of the driver of the RTC bus. The respondent – Corporation has not challenged the quantum of compensation awarded by the Tribunal. I have carefully perused the oral evidence of PW.2 and PW.4 and Exs.X.1 to X.3. A perusal of the same reveals that there was a deformity to both legs of the petitioner. As rightly pointed out by the Tribunal, it may not be possible for the petitioner to attend the coolie work. The Tribunal rightly considered the oral and documentary evidence, and awarded an amount of Rs.2,57,653/- under the head of 'loss of future earnings'. The amount of compensation awarded by the Tribunal under various heads is just and reasonable to meet the ends of justice. Hence, there are no grounds much less valid grounds to interfere with the well considered judgment and award passed by the Tribunal.

15. In the result, the Appeal is dismissed. There shall be no order as to costs.

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

T.SUNIL CHOWDARY, J

Date: 09.03.2015

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