

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.1701 of 2006

JUDGMENT:

Aggrieved by the order dated 27.01.2006 in O.P.No.146 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-XI Additional Chief Judge, City Civil Court (FTC), Hyderabad (for short 'the Tribunal), whereby and whereunder a sum of Rs.3,93,000/- with interest @ 8% per annum was granted, the instant appeal is preferred by the respondents 1 and 2- Andhra Pradesh State Road Transport Corporation (APSRTC).

2. The respondent herein is the petitioner, while the appellants 1 and 2 herein, who are the Managing Director and Depot Manager of the APSRTC, were the respondents in the original petition.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 22.04.2002, the petitioner was driving his motorcycle along with one Mr.Thirupathaiah as pillion rider and at about 08.30 AM, they were behind the RTC bus bearing No.AP-10-Z-7745 at Macherla Village, the petitioner sought side in order to overtake it and the driver initially gave him side and he over took the bus. Thereafter, another RTC bus bearing No.AP-09-Z-1574, coming in opposite direction, since driven by its driver in a rash and negligent manner dashed the motorcycle of the petitioner, due to which, the petitioner fell down and sustained injuries and the said bus ran over his left leg. The petitioner claims that he was earning Rs.4,000/- per month from business and agriculture and aged 35 years on the date of accident and, therefore, sought Rs.6,00,000/- as compensation against respondents.

5. The respondents filed common counter opposing the claim.

6. Basing on the above pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner himself was examined as P.W.1 besides examining Dr.P.L.Srinivas as PW.2 and one M.Gopal Reddy as PW.3 and marked Exs.P.1 to P.159 besides marking Exs.X.1 and X.2 through PW.2 and Exs.X.3 and X.4 through PW.3. On behalf of the respondents, no witnesses were examined and no documents were marked.

7. The Tribunal on appreciation of evidence on record let in by the petitioner, recorded a definite finding on issue No.1 that the accident had occurred after the petitioner overtaken the bus and covered 10 mts. ahead of the bus which he had overtaken and then only the opposite coming bus struck him resulting injuries to him and, therefore, held that due to rash and negligent driving of the driver of the APSRTC, the accident occurred. On issue Nos.2 and 3, the Tribunal basing on the evidence of PWs.2 and 3, since there was amputation of the leg, granted Rs.36,000/- towards loss of earnings for a period of 18 months, Rs.20,000/- towards transport to hospital, Rs.10,000/- towards extra nourishment, Rs.60,000/- towards medical expenses, Rs.2,000/- towards damage to clothing, Rs.35,000/- towards pain and suffering and Rs.2,30,000/- towards partial permanent disability. Thus, a total sum of Rs.3,93,000/- with interest @ 8% per annum.

8. It is the said order which is under challenge, in the instant appeal preferred on the ground that the Tribunal was not right in taking the age of the petitioner as 35 years since, Exs.P.1 and P.2 would show the age of the petitioner as 50 years and, therefore, sought to dismiss the claim.

9. Heard Sri VTM Prasad, learned standing counsel for APSRTC and Sri V. Atchuta Ram, learned counsel for the respondent.

10. Perused the order under challenge and oral and documentary evidence let in by the petitioner, more particularly, evidence of PWs.2

and 3. As seen from item No.7 of Para 17 of the order, the Tribunal made observation that photographs filed by the petitioner and the age mentioned in Exs.P.3 and P.5, which are certified copies of medical certificate dated 22.04.2002 and original discharge ticket of OGH dated 25.06.2002 respectively, would show the age of the petitioner as 30 years and, therefore, the Tribunal has taken the age of the petitioner as 35 years by observing that the complaint was not given by the petitioner and someone else was the complainant and that must be a reason, the age of the petitioner must have shown as 50 years in Exs.P.1 and P.2, which are certified copies of FIR and charge sheet. That finding recorded by the Tribunal since based on legally acceptable evidence through Exs.P.3 and P.5, where there was an occasion for the petitioner to communicate his age to the hospital authorities, certainly, cannot be construed as perverse and, therefore, it does not warrant interference. At the outset, it is to be observed that there was amputation which is not in dispute and, therefore, the reasons assigned in awarding Rs.36,000/- towards loss of earnings for a period of 18 months by taking monthly income at Rs.2,000/- as against Rs.4,000/- claimed by the petitioner, Rs.20,000/- towards transport to hospital, Rs.10,000/- towards extra nourishment, Rs.60,000/- towards medical expenses, Rs.2,000/- towards damage to clothing, Rs.35,000/- towards pain and suffering and Rs.2,30,000/- towards partial permanent disability as against Rs.2,51,000/- claimed by the petitioner, are just and adequate. Even if Rs.2,000/- is taken as monthly income as taken by the Tribunal and annual income of Rs.24,000/- and the age of the petitioner as 35 years, if the percentage of disability is taken at 70%, the petitioner would be probably entitled to slightly more amount towards partial permanent disability. Therefore, viewed from any angle, the compensation of Rs.3,93,000/- granted by the Tribunal is not excessive nor arbitrary.

11. On the other hand, the compensation is just and adequate and, therefore, no merit is to be found and the appeal is liable to be

dismissed. So far as interest is concerned, the same is reduced from 8% to 7.5% per annum as per the decision of the Hon'ble Apex Court in ***Rajesh and others v. Rajbir Singh and others***^[1].

12. In the result, the appeal is dismissed. There shall be no order as to costs.

13. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

Date: 11.02.2015.
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^[1] 2013 ACJ 1403