

The Hon'ble Sri Justice T. Sunil Chowdary

MACMA No.755 OF 2009

JUDGMENT:

1 Aggrieved by the judgment and award dated 31.01.2008 passed in MVOP No.322 of 2006 on the file of Chairman, Motor Accidents Claims Tribunal-cum-VI Additional District Judge, East Godavari District at Rajahmundry, wherein and whereby an amount of Rs.1,04,000/- was awarded to the petitioner as compensation as against a claim of Rs.2.00 lakhs, the 2nd respondent - insurer has filed the present appeal.

2 For the sake of convenience, the parties to this appeal are hereinafter referred to as they are arrayed before the Tribunal.

3 The facts leading to the filing of the present appeal are briefly as follows:

4 On 24.11.2004 the petitioner and another were proceeding from Rajahmundry towards Kanavaram on a motorcycle bearing No.AHF 6930 and that the petitioner was pillion rider. When they reached near Buddala Satyanarayana land at Parijarlapeta village, Rajanagaram Mandal, driver of an RTC bus bearing No.AP 10 Z 5222, while coming in opposite direction, had driven the same in a rash and negligent manner and dashed against the scooter. The accident occurred due to the rash and negligent driving of the driver of the RTC bus. In connection with the said accident, the Station House Officer, Rajanagarm registered a case in Cr.No.227 of 2004 for the offence punishable under Section 338 IPC against the driver of the RTC bus. The petitioner sustained grievous injuries on various parts of his body including head injury and one fracture to right leg due to the accident. The petitioner took treatment as inpatient in Swatantra hospital, Rajahmundry for two months and spent an amount of Rs.50,000/- towards medicines and treatment. By the date of accident, the petitioner was aged about 55 years and used to earn Rs.10,000/- as an agriculturist. Hence the petitioner filed claim petition seeking compensation of Rs.2.00 lakhs contending that both the respondents are

jointly and severally liable to pay compensation to him.

5 The second respondent filed counter denying the material averments made in the petition, inter *alia* contending that the accident occurred due to the negligent driving of the rider of the motorcycle and that there was no negligence on the part of the first respondent. The petitioner sustained only simple injuries and that the amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. Therefore, this respondent is not liable to pay compensation to the petitioner. The first respondent, who is the driver of the RTC bus, filed memo adopting the counter filed by the second respondent.

6 Basing on the above pleadings, the Tribunal framed the following issues for trial:

- i. Whether the accident was due to the rash and negligent driving of the driver of the RTC bus bearing No.AP-10Z 5222 and the driver of the motorcycle bearing No.AHF 6930?
- ii. Whether the petitioner is entitled for compensation amount as claimed? If so, from which of the respondent?
- iii. To what relief?

7 During the course of trial, on behalf of the petitioner P.Ws.1 and 2 were examined and Exs.A.1 to A.9 were marked. No oral or documentary evidence was adduced on behalf of the respondents.

8 The Tribunal, after appreciating the oral, documentary evidence and other material available on record, held that the accident occurred due to the rash and negligent driving of the driver of the RTC bus i.e. first respondent and allowed the petition in part by granting Rs.1,04,000/- as compensation to the petitioner. As stated supra, feeling aggrieved by the judgment and award passed by the Tribunal, the second respondent – Corporation filed the present appeal.

9 Sri S.V.Ramana, the learned standing counsel for the respondent

/ appellant 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 only i.e. first respondent is not sustainable either on facts or on law. He further submitted that the amount of compensation awarded under various heads is highly excessive and exorbitant.

10 There is no representation on behalf of the petitioner/claimant.

11 Now the points that arise for consideration in this appeal are as follows:

- a. Whether the rider of the motorcycle bearing No.AHF 6930 was also responsible to cause the accident?
- b. Whether the Tribunal has awarded fair, just and reasonable compensation or not?

Point No.1:

12 In order to prove the factum and manner of accident, the petitioner examined himself as P.W.1 and got marked Exs.A.1 and A.3. As seen from the testimony of P.W.1, at the time of accident, he was proceeding on the motorcycle of one Sangeetha Srinivasa Rao as pillion rider. As per the testimony of P.W.1, the accident occurred due to the rash and negligent driving of the driver of the RTC bus and there was no negligence on the part of the rider of the motorcycle. In the cross-examination also, P.W.1 in unequivocal terms deposed that the accident occurred due to the rash and negligent driving of the driver of the RTC bus. In the cross-examination of P.W.2 nothing is elicited to shake his testimony so far as the manner of accident is concerned. P.W.1 is an injured witness, therefore, possibility of distortion of facts to suit his claim cannot be ruled out completely. From a perusal of Ex.A.1 - F.I.R and Ex.A.3 charge sheet, it is manifest that the accident occurred only due to the rash and negligent driving of the driver of the RTC bus. The oral testimony of P.W.1 is fully supported by the recitals of Exs.A.1 and A.3 so far as the manner of accident is concerned.

13 Mere taking of plea in the counter by itself would not amount to proof of the stand taken by the respondent. If really the accident occurred

due to the rash and negligent driving of the rider of the motorcycle, what prevented the driver of the RTC bus i.e. first respondent to lodge a complaint with the police immediately after the accident? Of course, mere non-lodging of complaint by itself is not a sufficient ground to believe the version of the petitioner. First respondent is the competent person to speak about the manner of accident and also about the negligence, if any, on the part of the rider of the motorcycle, if any. For one reason or the other, the driver of the RTC bus i.e. first respondent did not choose to enter the witness box. The Corporation also did not take steps to examine any other eyewitness to prove the stand taken by them. For the reasons best known to them, the respondents did not choose to examine anybody. When the driver of the RTC bus abstains himself from entering the witness box, there is no other option for the Tribunal except to draw an adverse inference against him. Therefore, in my considered view, the Tribunal had rightly considered the oral and documentary evidence available on record and arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the RTC bus. There are no grounds much less valid grounds to set aside the finding of the Tribunal on issue No.1. In the light of the foregoing discussion, I have no hesitation to hold that the accident occurred due to the rash and negligent driving of the driver of the RTC bus. This point is answered accordingly.

Point No.2:

14 As seen from the testimony of P.W.1, he sustained as many as 14 injuries, which includes a grievous injury on head apart from fracture to his right leg. A perusal of Ex.A.2-wound certificate also clearly reveals that the petitioner sustained fracture to his right leg and grievous injuries on head and other parts of the body. As per the testimony of P.W.2, the petitioner sustained fracture and grievous injuries on various parts of the body. The oral testimony of P.Ws.1 and 2 is supported by Ex.A.2 wound certificate so far as the nature of injuries sustained by the petitioner. A perusal of Ex.A.8 case sheet and Ex.A.9 discharge summary, marked

through P.W.2, clearly reveal that the petitioner was admitted in Swathantra hospital, Rajahmundry on 24.11.2004 and was discharged on 06.12.2004. A perusal of Ex.A.6 - C.T. scan report and Ex.A.7 - C.T. scan film clearly reveals that the petitioner sustained grievous injury to the head. The petitioner might have suffered a lot due to the injuries. The Tribunal awarded an amount of Rs.44,500/- towards pain and suffering. The testimony of P.W.2 reveals that the petitioner lost memory to certain extent. Having regard to the facts and circumstances of the case, I am of the considered view, awarding of an amount of Rs.44,500/- towards pain and suffering is just and reasonable.

15 It is a known fact that the injured persons have to spend more amount in private hospitals. As per Ex.A.5 medical bills, the petitioner spent Rs.39,298-68 ps towards purchase of medicines. For one reason or the other, the Tribunal did not award any amount towards C.T. Scan and X-ray films. The present appeal is filed by the Corporation. Therefore, it is not fair on the part of this Court to enhance the compensation under the said head. Awarding of Rs.40,000/- towards medicines and treatment is just and reasonable.

16 Because of the injuries sustained by him, the petitioner might not have attended to work for a period of three months including the period of treatment. The Tribunal awarded an amount of Rs.4,500/- towards loss of earnings, which, in my considered view, is just and reasonable. The Tribunal also awarded Rs.15,000/- towards five grievous injuries. The compensation awarded by the Tribunal under various heads is also just and reasonable and would meet the ends of justice.

17 Having regard to the facts and circumstances of the case, I am unable to accede to the contention of the learned counsel for the respondents that the compensation awarded by the Tribunal is excessive and exorbitant. There are no grounds much less valid grounds to interfere with the well considered judgment and award passed by the Tribunal.

18 Accordingly, this appeal is dismissed. As a sequel,

miscellaneous petitions, pending in this appeal, if any, shall stand closed.
No order as to costs.

T.SUNIL CHOWDARY, J.

Date: 2nd February, 2015.

kvsn