

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No. 710 OF 2011

Judgment:

The respondent – APSRTC preferred the instant appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the order, dated 23.03.2009, passed in MVOP No.121 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Kadapa.

2. By the aforesaid order, the Tribunal has granted a total sum of Rs.2,58,000/- with interest at 6% p.a., for the injuries sustained by the petitioner, quantifying it as follows.

a) Compensation towards pain and sufferance	Rs. 22,000/-
b) Compensation towards medical expenses	
Rs.1,10,000/-	
c) Compensation towards extra nourishment	Rs. 3,000/-
d) Compensation towards transport charges	Rs. 3,000/-
e) Compensation towards partial permanent disability	Rs.1,20,000/-
Total:	Rs.2,58,000/-

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

4. Facts, in brief, are that on 13.05.2005, while the petitioner was riding pillion on a motor cycle bearing registration No.AP-04D-5773 driven by his friend T. Venkata Subba Reddy at about 11.30 AM, near PWD bungalow turning at Khajipet, the

RTC bus belonging to the respondent bearing registration No.AP-11Z-2817, driven in a rash and negligent manner at high speed, dashed the motor cycle due to which he sustained fracture to his right leg. He was given first aid at the Government Headquarters Hospital, Kadapa. Later, he was referred to Government General Hospital, Kurnool. While undergoing treatment his right leg was amputated below knee level during the first operation and there was second surgery resulting in removal of the same above knee level and, thus, he claims that he was permanently disabled on account of amputation, and therefore, he sought compensation of Rs.3,50,000/- laying claim under Section 166 of the Act and the Rules framed thereunder.

5. The respondent – APSRTC opposed the claim contending that the claim is bad for non-joinder of owner, driver and insurer of the motor cycle.

6. The Tribunal framed three issues about the responsibility for the accident. During enquiry, before the Tribunal, the petitioner himself was examined as PW.1 and marked Exs.A1 to A6.

7. On issue No.1, the Tribunal, relying on the evidence of PW.1 supported by Exs.A1 and A2, which are the certified copies of FIR and charge sheet, wherein the driver of the RTC bus was shown as accused and, since there is no rebuttal evidence on behalf of the respondent – APSRTC, held issue No.1 in favour of the petitioner.

8. On issue No.2, basing on the nature of injuries shown in

Ex.A3 – wound certificate, awarded compensation of Rs.22,000/- towards pain and suffering; basing on Ex.A5 - medical bills numbering 69, a sum of Rs.1,10,000/- was granted towards medical expenses, towards extra nourishment a sum of Rs.3,000/- was granted, towards transport charges a sum of Rs.3,000/- was granted and towards partial permanent disability a sum of Rs.1,20,000/- was granted taking into consideration 50% disability shown in Ex.A6 – disability certificate and taking the age of the petitioner as 55 years, the income at Rs.2,500/- per month notionally and working out the same by applying the multiplier '8'. Thus, a total sum of Rs.2,58,000/- was awarded with interest at 6% p.a.

9. It is the afore mentioned order, which is challenged in the instant appeal by the APSRTC mainly contending in the grounds of appeal that the Tribunal did not consider the contributory negligence that, the Tribunal awarded excessive compensation that, the Tribunal ought to have dismissed the OP for non-joinder of necessary parties i.e., owner, driver and insurer of the motor cycle. It is also stated that the Tribunal was wrong in assessing the disability at 50% despite the fact that the respondent/petitioner did not choose to examine the doctor to prove the disability mentioned in Ex.A6.

10. Heard Sri A. Rama Rao, learned Standing Counsel for the APSRTC and Sri K. Amaranatha Reddy, learned counsel for the respondent/petitioner.

11. Learned counsel for the respondent submits that the amount awarded by the Tribunal is just and adequate and even

the findings recorded by the Tribunal in arriving at a conclusion attributing negligence on the part of the driver of the RTC bus is supported by well appreciated reasoning and, therefore, does not warrant interference and requested to confirm the same.

12. Perused the order under challenge and oral and documentary evidence let in by the petitioner. As referred to above, while narrating the grounds in the appeal raised by the appellant/respondent, three main grounds are forthcoming. The first ground is that the Tribunal failed to consider the plea of contributory negligence. In that direction, there is absolutely nothing from the side of the Corporation to show that there was contribution on the part of the driver of the motor cycle and in fact the Corporation has not chosen to examine the driver who drove the RTC bus at the relevant time. Even, nothing is brought on record to show that the driver of the motor cycle did contribute to the accident. So, that ground is unsustainable.

13. Next ground is, that the Tribunal ought to have dismissed the OP for non-joinder of necessary parties. When the plea of contributory negligence put forth by the Corporation is rejected this ground does not survive.

14. The next ground is that the Tribunal ought not to have taken the disability at 50% for the reason that the Medical Officer is not examined to prove the disability as shown in Ex.A6. It is true, to prove the disability, the petitioner invariably has to examine the doctor, but where there is amputation, absolutely there is no need to examine the doctor at all to prove the disability. The very fact that the amputation below knee level

would definitely indicate that the percentage of disability would range from 50% to 70% or even more. It is needless to refer to the decisions on this subject in view of the settled principle laid down by the Hon'ble Supreme Court. In that view of the matter, the percentage of disability at 50% taken by the Tribunal cannot be faulted with.

15. Coming to the quantum of compensation, the Tribunal has taken the income notionally, despite the fact that the petitioner has contended that he was earning Rs.6,000/- per month by doing business in purchasing and selling cattle and then worked out by applying the multiplier '8', taking the age of the petitioner as 55 years and awarded Rs.25,000/- towards other heads based on proper appreciation of material on record, more particularly, the amount of Rs.1,10,000/- granted towards medical expenses as borne out from Ex.A5 which consists of 69 medical bills and, therefore, viewed from any angle, there is absolutely no merit in the appeal and the same is liable to be dismissed.

16. Accordingly, the MACMA is dismissed. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

Date: 27.02.2015

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