

HON'BLE SMT JUSTICE ANIS

M.A.C.M.A.No.1127 of 2005

J U D G M E N T:

This appeal is filed by the appellant/second respondent under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the order and decree dated 27.01.2005, passed by the Chairman, Motor Accident Claims Tribunal-cum-District Judge, West Godavari, Eluru, in O.P.No.250 of 2004, awarding compensation of Rs.4,86,142/-.

2. The respondent No.1/petitioner filed the above Original Petition under Section 166 of the Act read with Rule 455 of the Motor Vehicle Rules, 1989 (for short 'the Rules'), claiming compensation of Rs.9,00,000/- on account of the injuries sustained by him in a motor vehicle accident that occurred on 06.05.2003.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4. The brief averments made in the petition are that on 06.05.2003, when the petitioner was going to his employment to attend his office at Rajahmundry at 8:30 a.m, and when he reached the road-cum-rail bridge, Kovvur on his father's two wheeler bearing No.AP.5F.6084, the first respondent who is the driver of the RTC bus bearing No.AP.9Z.9411 of Kovvur Depot came from Rajahmundry in a rash and negligent manner and dashed against the petitioner and his two wheeler, due to which the petitioner fell down and received grievous injuries. Immediately after the accident, the petitioner was shifted to the Government Hospital, Kovvur for treatment and on advice, he was shifted to Government General Hospital, Kovvur for treatment and thereafter, he was shifted to Aravindam Orthopaedic and Physiotherapy Centre, Rajahmundry. The petitioner spent Rs.4,00,000/- for surgeries, medicines, treatment etc., and he was discharged after 48 days and again he was joined as

inpatient on October, 2003 and discharged on 01.11.2003, during which plastic surgery was conducted and is continuing treatment as outpatient. The petitioner is the only son to his parents and he lost his job due to the said accident. The petitioner is aged about 23 years and working as Technician in Pratyusha Automotives (Mode Zerox) and getting Rs.4,500/- p.m and he was enrolled as a member in the Institution of Engineers (India), Kolkatta. The first respondent is the driver and second respondent is the owner of the vehicle and as such, both are jointly and severally liable to pay compensation to the petitioner.

5. The brief averments made in the counter filed by the first respondent are as follows:

The first respondent put the petitioner to prove the manner of accident, his age and income and specifically stated that the petitioner is a learner and on the date of incident, he drove the vehicle very rashly and negligently and dashed against the bus on the right side bumper while overtaking one lorry. If the first respondent dashed the petitioner's vehicle, the petitioner should have received injury to his right leg. The respondent also put the petitioner to prove the medical bills and treatment taken in various hospitals by spending huge amounts and finally stated that the documents are created for the purpose of filing the petition and prayed the Court to dismiss the petition.

6. The brief averments made in the counter filed by the second respondent are as follows:

The second respondent put the petitioner to prove the manner of accident, his age and income and denied that the driver of the bus was rash and negligent while driving the vehicle and caused the accused. The respondent stated that the Joint Accident Enquiry Committee consisting of the Superintendent (Traffic) and Depot Manager, Kovvur also opined that the alleged accident took place due to the motor cyclist only. It is further alleged that the owner and Insurer of the Hero Honda Motorcycle

are proper and necessary parties and petition filed by the petitioner is bad for non-joinder of necessary parties and prayed the Court to dismiss the petition.

7. Basing on the above pleadings, the Tribunal framed three issues and to substantiate his claim, the petitioner got examined PWs.1 & 2 and got marked Exs.A.1 to A.10 on his behalf. On behalf of the respondents, RW.1 was examined and no documentary evidence got marked.

8. After considering the evidence of PW.1 and RW.1 and after perusing the copy of the First Information Report and copy of the Charge Sheet, the Tribunal held that the accident occurred due to rash and negligent driving of the first respondent and awarded compensation of Rs.4,86,142/- along with interest at 9% p.a. to the petitioner against both the respondents.

9. Being aggrieved by the award passed by the Tribunal, the second respondent preferred the present appeal.

10. The learned counsel appearing for the appellant/second respondent argued that the Tribunal rightly rejected the compensation under the head of loss of earnings, transportation to the hospital and extra nourishment on the ground that the petitioner has not produced any evidence; that the Tribunal after considering Exs.A8 & A9 rightly awarded Rs.2,81,142/- for treatment, medicines, surgery etc., and also awarded Rs.25,000/- for pain and sufferings; that the Tribunal rightly held that there is no evidence to show that the petitioner was unable to do any work after the accident and the disability caused hurdle to his future job etc., It is also argued that the Tribunal without taking the said observation into consideration, awarded Rs.1,00,000/- as compensation for continuing and permanent disability; that the petitioner has not produced any evidence to show that he suffered loss of future earning capacity, but without evidence, the Tribunal awarded Rs.80,000/- towards future

treatment like physiotherapy by believing the evidence of PW.1 and the said finding also needs interference by this Court and first respondent/petitioner is not entitled for the compensation under the said head and finally prayed the Court to reduce the interest from 9% p.a to 7.5% p.a in view of the judgments of the Hon'ble Apex Court, reported in ***Sanobanu Nazirbhai Mirza and others v. Ahmedabad Municipal Transport Service***^[1] and ***Rebeka Minz and others v. Divisional Manager, United India Limited Insurance Company Limited and another***^[2].

11. On the other hand, the learned counsel for the first respondent argued that the First Information Report and Charge Sheet filed by the petitioner clearly shows that the first respondent was rash and negligent while driving the bus. RW.1 never stated in his evidence that he was not rash and negligent while driving the bus at the time of accident, therefore the Tribunal rightly held that the accident occurred due to rash and negligent driving of the driver of the bus and the said fact needs no interference. It is also argued that after considering the evidence on record, the Tribunal awarded compensation for disability, compensation for loss of earnings and the compensation of future treatment like physiotherapy as the petitioner suffered two grievous injuries and prayed the Court to dismiss the appeal.

12. Having regard to the submissions made by the learned counsel appearing for both the parties, the point which is to be decided in this appeal is as follows:

Whether the appellant/second respondent is liable to pay compensation to the first respondent/petitioner or not?

13. **P O I N T:** A perusal of the evidence of PW.1 shows that on 06.05.2003, while he was going to his employment on his father's two wheeler bearing No.AP.5F.6084 on the road-cum-rail bridge, Kovvur, at

that time one RTC bus bearing No.AP.9Z.9411 driven by RW.1 in a rash and negligent manner dashed the two wheeler of the petitioner, due to which the petitioner fell down. Police registered the case against RW.1 for his rash and negligent driving and after conducting investigation, filed charge sheet under Ex.A6. On the other hand, respondent No.2/respondent No.1 examined himself as RW.1 and contended that the petitioner was a learner and while overtaking a lorry, he dashed the bus due to rash and negligent driving, therefore the first respondent is not responsible for the accident. To prove these facts, RW.1 has not produced any evidence, much less, the evidence of the eye witnesses. Further, to disprove the evidence of PW.1 and Exs.A1 & A6, the Insurance Company has not summoned the Investigating officer, who filed the charge sheet, alleging that the petitioner was rash and negligent at the time of accident. In the absence of any evidence, the petitioner proved that the accident occurred due to rash and negligent driving of the driver of the RTC bus and therefore, the finding of the Tribunal with regard to the manner of accident needs no interference.

14. Coming to the quantum of compensation is concerned, the Tribunal has not granted any compensation to the petitioner for his loss of earnings, transportation to hospital and extra nourishment and rejected the contention of the petitioner. For this finding of the Tribunal, the petitioner has not preferred any appeal and therefore, it becomes final. The petitioner in his evidence stated that he received grievous injuries and he spent Rs.4,00,000/- for surgeries and medicines and produced Exs.A8 & A9. Basing on the oral evidence of PW.1 and PW.2-the doctor, who treated the petitioner, the Tribunal rightly awarded an amount of Rs.2,81,142/- for the treatment and medicines taken by the petitioner. For the grievous injuries, the Tribunal rightly awarded an amount of Rs.25,000/- to the petitioner towards pain and sufferings. The said findings are not disputed by the learned counsel for appellant. The only contention of the learned counsel is that the petitioner has not examined

any doctor to prove that the petitioner is permanently disabled and no disability certificate was filed after having obtained from the competent authority and there is no evidence to show that the petitioner needs further treatment and therefore, no amount can be awarded under this head.

15. PW.2 is the doctor, who stated in his evidence that first surgery was done on the left side of the femur of the petitioner and the petitioner is suffering with 40% disability, and that it can be reduced or improved above 25%. It is an admitted fact that the petitioner has not produced disability certificate, the petitioner has not explained that the disability suffered by him hinders his future job etc. But the fact remains that in the accident petitioner sustained two grievous injuries and also suffered disability. Therefore, the Tribunal awarding Rs.1,00,000/- compensation to the petitioner under the said head of continuous and permanent disability also needs no interference.

16. PW.2 is an orthopedician stated in his evidence about the nature of injuries received by the petitioner. He also stated that he conducted surgeries on the left femur and there was extensive comminution of left femur, which resulted shortening of the bone; that it was fixed with a interlocked nail to restore the stability and integrity of femur at the cost of shortening of 3 inches; and that for future treatment, the petitioner may incur Rs.80,000/- to Rs.90,000/-. Even after discharge, he was attending as outpatient to his hospital. There is no contra evidence to disprove the evidence of PW.2. Considering the evidence of PW.2, the Tribunal rightly awarded Rs.80,000/- as compensation under the head of future treatment like Physiotherapy. The said finding of the Tribunal needs no interference. Thus, the compensation awarded by the Tribunal is just and reasonable and the finding of the Tribunal is based on record and the appellant has not made out any case for interference.

17. The learned counsel for the appellant/second respondent has also

argued that the petitioner is not entitled for interest at 9% p.a and therefore, it has to be reduced in view of the settled laws. In ***Sanobanu Nazirbhai Mirza's case*** (first cited supra), the Hon'ble Supreme Court awarded interest @ 7.5% p.a. In ***Rebeka Minz's case*** (second cited supra), the Hon'ble Supreme Court awarded interest at 7% p.a. Thus, in view of the different rate of interests granted by the Apex Court in the judgments cited above, I am of the considered view that the rate of interest awarded by the Tribunal is excessive and therefore, it is a fit case to reduce the rate of interest from 9% to 7.5% p.a.

18. In the result, the Appeal is allowed in part, not interfering with the compensation awarded by the Tribunal, but reducing the rate of interest from 9% to 7.5% p.a from the date of petition till the date of realisation. No order as to costs.

19. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

ANIS, J

Date: 28.08.2015

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[\[1\]](#) 2013 ACJ 2733

[\[2\]](#) 2012 ACJ 2328