

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

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M.A.C.M.A.No.11 of 2009

JUDGMENT:

This appeal is filed by the appellant/petitioner assailing the judgment and award, dated 21.08.2008 passed in M.V.O.P.No.112 of 2007 on the file of the IV Additional District Judge-cum-Chairman, Motor Accident Claims Tribunal, Kurnool (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 appeal, in brief, are as follows:

On 25.08.2006, the petitioner was proceeding to Somayajulapalli on a bullock cart with load eight chilli bags. When he reached near Somayajulapalli cross roads, the driver of the R.T.C. bus bearing No.AP-11-Z-5163 had driven the same in a rash and negligent manner and hit the bullock cart from behind. Due to accident, both bullocks sustained grievous injuries. One bullock died on the spot and another bullock died while undergoing treatment. Due to accident, the petitioner sustained fracture and injuries on various parts of the body and took treatment for long time in Government General Hospital, Kurnool. Due to death of the bullocks, the petitioner lost his income. Therefore, the petitioner filed a petition under Sections 163 (A) and 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.1,20,000/-.

4. The respondent - Corporation filed counter denying the material averments made in the petition *inter alia* contending that the accident occurred due to the negligent act of the petitioner and there was no negligence on the part of the driver of the R.T.C.bus. The petitioner sustained only simple injuries. The amount of compensation claimed by the petitioner under various heads is highly excessive and

exorbitant. Hence, the petition is liable to be dismissed.

5. Basing on the above pleadings, the Tribunal framed the following issues:

1. Whether the petitioner sustained injuries in a motor accident that was occurred on 25-8-2006 at about 7-30 P.M. on account of rash and negligent driving of driver of APSRTC bus bearing No.AP-11-Z-5163 belongs to the respondent?
2. Whether the petitioner is entitled to claim compensation from the respondent, if so, to what extent?
3. To what relief?

6. During the course of trial, on behalf of the petitioner, PW.1 was examined and Exs.A.1 to A.6 were marked. On behalf of the respondent, no oral or documentary evidence was adduced.

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 R.T.C.bus and awarded an amount of Rs.45,000/- under different heads.

8. Feeling aggrieved by the judgment and award of the Tribunal, the petitioner/claimant preferred the present appeal.

9. Heard Sri G.Shraavan Kumar, Advocate, representing Sri S.V.Govardhan Reddy, the learned counsel for the appellant and Sri A.Rama Rao, the learned Standing Counsel for A.P.S.R.T.C. (respondent).

10. The contention of the learned counsel for the appellant/petitioner is two-fold. (1). The Tribunal has not considered the recitals of Exs.A.3 to A.5 in right perspective and discarded the same on untenable grounds, and (2). The amount of compensation awarded under

various heads is too meagre.

11. The learned Standing Counsel for A.P.S.R.T.C. submitted that the Tribunal rightly discarded Exs.A.4 and A.5 for non-examination of concerned person. He further submitted that the amount of compensation awarded under various heads is just and reasonable.

12. Now the point that arises for consideration in this appeal is whether the Tribunal has awarded just and reasonable compensation to the petitioner or not?

13. As per the finding of the Tribunal, the accident occurred due to rash and negligent driving of the driver of the RTC bus. For one reason or other, the respondent - Corporation did not choose to file an appeal challenging the finding of the Tribunal on issue No.1. The finding recorded by the Tribunal became final so far as the manner of the accident is concerned. Basing on the material available on record, this Court would safely 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 the death of two bullocks and injuries to the petitioner.

14. A perusal of the record reveals that the Tribunal awarded an amount of Rs.15,000/- under the head pain and suffering. Even as per the finding of the Tribunal, the petitioner sustained six simple injuries and fracture to radius ulna. Due to injuries and fracture, the petitioner might have suffered a lot.

15. Taking into consideration the nature of the fracture, injuries sustained by the petitioner as well as the duration of the treatment taken by him, I am inclined to award an amount of Rs.20,000/- towards pain and suffering. Even though the petitioner has taken treatment in Government General Hospital, Kurnool, he might have spent some amount towards medicines and treatment. Hence, I am inclined to

award an amount of Rs.3,000/- towards medicines and extra nourishment. Due to injuries, the petitioner might not have attended his work at least for a period of one month. The Tribunal awarded an amount of Rs.5,000/- towards loss of income. The compensation awarded under this head is just and reasonable.

16. It is not in dispute that due to accident, two bullocks died. In Ex.A.5, the value of each bullock is mentioned as Rs.25,000/-. The contention of the learned counsel for the respondent is that the petitioner did not choose to examine the concerned person, therefore, much weight cannot be attached to Ex.A.5. The Tribunal or the Court should not expect documentary evidence to establish each and every fact. Sometimes it may not be possible for the villagers to produce the documentary evidence to substantiate their stand. Fortunately, in this case the petitioner has produced Ex.A.5 before the Tribunal to prove the value of the bullocks. The veterinary doctor, who issued Ex.A.5, is competent to assess the value of the bullock. Sometimes the doctors may issue certificates on humanitarian grounds to help the claimants. The Tribunal has to take into consideration the ground realities while appreciating the recitals of the documents.

17. Having regard to the facts and circumstances of the case and also the age of the bullocks, I am of the considered view that the cost of each bullock may be around Rs.20,000/- each. Hence, I am inclined to award an amount of Rs.40,000/- for the death of two bullocks. The Tribunal awarded an amount of Rs.5,000/- towards damage of the bullock cart. The petitioner has not produced any document to prove the exact damage caused to the bullock cart. Therefore, the Tribunal has granted an amount of Rs.5,000/- taking into consideration the material available on record. Hence, I am of the considered view that awarding of an amount of Rs.5,000/- towards loss of bullock cart is just and reasonable.

Thus, in all, the amount of compensation to which the petitioner is entitled under various heads is as follows:

Pain and suffering	----	Rs.20,000/-
For medicines, treatment and extra nourishment	----	Rs. 3,000/-
Loss of income	-----	Rs. 5,000/-
The cost of bullocks	-----	Rs.40,000/-
Loss of bullock cart	-----	Rs. 5,000/-
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Total:		Rs.73,000/-
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18. Therefore, I am of the considered view that the compensation awarded under various heads is just and reasonable to meet the ends of justice. The respondent – Corporation is vicariously liable for the wrongful acts done by its employee during the course of employment. Hence, the respondent has to pay the compensation amount awarded under various heads to the petitioner.

19. In the result, the Appeal is allowed in part enhancing the quantum of compensation from Rs.45,000/- to Rs.73,000/- with interest at the rate of 7.5% from the date of petition till the date of depositing the amount. The respondent is hereby directed to deposit the amount within two (2) months from the date of receipt of a copy of this judgment. On such deposit, the petitioner is entitled to withdraw the entire amount. There shall be no order as to costs.

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

T.SUNIL CHOWDARY, J

27th January, 2015
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