

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No. 837 of 2005

Judgment:

Aggrieved with the dismissal order, dated 07.01.2005, in MVOP No.108 of 1999 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge (Fast Track Court), Srikakulam (for short 'the Tribunal'), dismissing the claim of Rs.50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), for the injuries sustained by the petitioner, the instant appeal is preferred to set aside the order and decree passed by the Tribunal.

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

3. The petitioner's case, in brief, is that on 08.06.1998 at about 2.00 PM, while he was going on his bicycle, an RTC bus belonging to the second respondent – Corporation, driven at high speed in a rash and negligent manner, came in opposite direction and dashed the cycle, due to which, he sustained fracture to his left shoulder and other injuries to his person and, therefore, sought Rs.50,000/- as compensation from the respondents 1 and 2 who are the driver and Corporation respectively.

4. The claim petition against the first respondent was dismissed by the Tribunal on 13.10.1999. The second respondent – Corporation opposed the claim by raising various pleas.

5. The Tribunal, basing on the said pleadings, framed three issues as to the responsibility for the accident.

6. Before the Tribunal, the petitioner examined himself as PW.1 and marked Exs.A1 to A3. On behalf of the second respondent, the driver, who is the first respondent, deposed as RW.1 and no documents were filed.

7. The Tribunal, on issue No.1, on appraisal of evidence of PW.1 and Exs.A1 and A3, which are the certified copies of FIR and charge sheet, which show that the crime was registered and charge sheet was laid against RW.1 – first respondent, somehow, held the said issue against the petitioner, taking into consideration that the learned counsel for the appellant has contended that the petitioner himself was the eye witness to the occurrence, whereas the petitioner in his deposition stated that he became unconscious and regained conscious only two days thereafter.

8. On issue No.2, taking the nature of injuries shown in Ex.A2, which are two simple injuries and one grievous injury which was fracture of left shoulder of the petitioner, determined Rs.7,000/- towards pain and suffering and monthly earnings at Rs.1,000/- and, thus, arrived at a total sum of Rs.8,000/-, but however, in view of the finding on issue No.1, dismissed the claim itself.

9. Aggrieved with the said dismissal order, the instant appeal is preferred contending that the Tribunal did not properly appreciate the evidence on record and the Tribunal, having held that the petitioner is entitled to the amount determined by it, ought to have granted the same.

10. Heard Ms. I.K. Annapurna, learned counsel for the appellant. The second respondent – APSRTC, despite service of notice has not entered appearance. So far as the first respondent is concerned, it is endorsed in the grounds of appeal that he is not a necessary party.

11. Perused the order and the evidence on record both, oral and documentary, let in by the petitioner. A perusal of Ex.A1 – certified copy of FIR, would show that the crime was registered on 08.06.1998 at 21.00 hours, whereas the accident has taken place on the same day at 14.00 hours. Further, the name of the informant was shown

as S. Divakara Rao, the petitioner herein, and the relevant details as regards the manner in which the accident had occurred have been mentioned therein. Of course, the bus number was not mentioned, but however, it is clear that the bus Conductor shifted him in the same bus to the Government Hospital, admitted him and left the place. In fact, that statement was recorded at the hospital by the concerned Station House Officer. When the crime itself was registered on the very same day by visiting the hospital on intimation from the concerned Medical Officer as reflected from the contents of Ex.A1, merely basing on the assertion of the petitioner that he became unconscious soon after the accident and he regained conscious two days thereafter, accounts for a ground to dismiss the claim itself without there being any legally acceptable or convincing evidence on record. Therefore, that finding recorded on issue No.1 is hereby set aside holding that the accident has occurred only due to the rash and negligent driving of the RTC bus driver. The further investigation done by the concerned investigating agency and laying charge sheet under Section 338 IPC showing the name of the petitioner as LW.1 in the list of witnesses attached to charge sheet by way of memo of evidence is sufficient enough to believe the stand of the petitioner.

12. Ex.A2 is relevant for the purpose of assessing whether the compensation determined by the Tribunal is just, fair and adequate? Ex.A2 was issued by the Civil Assistant Surgeon, Government Civil Hospital, Palasa, Srikakulam District. The injuries sustained by the petitioner as described in Ex.A2 are, an abrasion of 2 x 3 cm., above left eye-brow and another abrasion of 7 x 1 x 1 cm., transverse recreation with presence of irregular edges over dorsal aspect of left elbow with presence of bleeding. The third injury was a contusion measuring 10 x 6 cm over left shoulder and the x-ray of the left shoulder joint AP view reflects fracture of upper end of humerus and, thereby, the doctor recorded that the injuries 1 and 2 were simple and the third injury was grievous in nature. When kept in view, the nature of injuries sustained by the petitioner, the amount determined by the Tribunal appears to be on lower side. For the grievous injury where the petitioner must have suffered inconvenience in moving his left hand, certainly, he is entitled to Rs.20,000/- towards injury as well as pain and suffering. Towards two simple injuries a sum of Rs.3,000/- each is granted, making it to Rs.6,000/-. Towards loss of temporary earnings the petitioner must have been unable to pursue his profession as it takes

minimum six weeks for healing the fracture. Therefore, for three months at the rate of Rs.1,000/- per month, Rs.3,000/- is awarded. Thus, the petitioner is entitled to a total sum of Rs.29,000/- as against Rs.8,000/- determined by the Tribunal, however, with interest at 7.5% p.a., as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**, on Rs.29,000/- from the date of petition till realisation.

13. Accordingly, the appeal is allowed in part setting aside the order and decree passed by the Tribunal and awarding Rs.29,000/- as compensation as mentioned above. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

Date: 27.03.2015

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