

**THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO**

**M.A.C.M.A.No.1287 of 2011**

**JUDGMENT:**

Challenging the compensation awarded in O.P.No.902 of 1995 dated 29.10.2001 by the Chairman, M.A.C.T-cum-District Judge, Nizamabad (for short “the Tribunal”), the claimant preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of the minor claimant—Elupula Naga Mallesh, who was aged about 10 years, is that on 05.03.1995, he and sixty others boarded the bus bearing No.AP 25 T 769 to go to pilgrimage and on the way when the said bus reached the limits of Vemur village in Medak District on 06.03.1995 at about 1:00am, the bus driver drove the bus at high speed and in a rash and negligent manner and dashed to a road side tree, due to which he and others sustained injuries. It is averred that the accident was occurred due to rash and negligent driving by the driver of the offending bus. On these averments, the claimant filed O.P.No.902 of 1995 under Section 166 of Motor Vehicles Act, 1988 (for short “M.V Act”) against respondents 1 and 2, who are owner and insurer of the offending bus and claimed Rs.50,000/- as compensation.

b) Respondent No.1 remained *ex parte*.

c) Respondent No.2/Insurance Company filed counter and denied all the material averments made in the petition and

urged the claimant to prove that the driver of the bus had valid and effective driving licence to drive the bus and that the vehicle is validly insured with it. R.2 contended that compensation claimed is excessive and thus prayed to dismiss the O.P.

d) During trial, PWs.1 and 2 were examined and Exs.A.1 to A.4 were marked on behalf of claimant. Copy of final report was marked as Ex.B.1.

e) On appreciation of both oral and documentary evidence, the Tribunal awarded compensation of Rs.500/- with costs and interest @ 9% p.a. against respondents 1 and 2 under the head violent shock.

Hence, the appeal by claimant.

3) The parties in this appeal are referred as they stood before the Tribunal.

4) Heard arguments of Sri Ch.Janardhan Reddy, learned counsel for appellant/claimant and Smt.M.Seetha Devi, learned counsel for respondent No.2/Insurance Company. Notice sent to R.1 was returned with an endorsement that addressee expired.

5 ) Impugning the award, learned counsel for appellant/claimant argued that due to overturning of the bus, all the passengers including claimant suffered severe injuries and about 8 persons died and so far as claimant is concerned, he

sustained injuries on head, waist, both knees and abdomen but the Tribunal awarded a pittance of Rs.500/- which is quite unjust. He thus prayed to enhance the compensation.

6) Per contra, learned counsel for 2<sup>nd</sup> respondent/ Insurance Company supported the award on the submission that claimant suffered simple injuries and he could not produce any record showing that he suffered any grievous injuries. He thus prayed to dismiss the appeal.

7) In the light of above rival arguments, the point for determination in this appeal is:

*“Whether the compensation awarded by the Tribunal is just and reasonable or needs interference?”*

8) **POINT:** Perusal of the Ex.A.4—prescription shows that the claimant suffered injuries on head and back side. He was referred for X-ray of Skull and Lower Spinal. Except Ex.A.4, the appellant did not file X-ray reports and case sheet of the Hospital where he was treated. He also did not examine the doctor. Considering it, the Tribunal did not place reliance on Ex.A.4 and having taken the fact that the appellant travelled in the ill-fated bus and suffered shock due to the accident, awarded Rs.500/-. A perusal of Ex.B.1—final report reveals how ghastly the accident was. A tourist bus engaged by the claimant and about 60 others for pilgrimage met with accident. On the way due to rash and negligent driving by the driver of the bus, the bus went and hit a roadside tree and due to the

impact of the said accident, 8 persons died on the spot and remaining others suffered simple and grievous injuries. The driver also died in the accident. Having regard to the nature of accident, it is obvious that all the passengers must have undergone shock and trauma. In that context, it cannot be said that the claimant had not suffered any injuries. Though the claimant could not produce proper medical record, taking into consideration the nature of accident in which he was involved, for shock and injuries the compensation is enhanced from Rs.500/- to Rs.3,000/-.

9) In the result, this MACMA is partly allowed and ordered as follows:

- a) Compensation is enhanced by **Rs.2,500/-** (Rs.3,000/- minus Rs.500/-) with proportionate costs and interest at 9% per annum from the date of O.P till the date of realization.
- b) Respondents are directed to deposit the compensation amount within two months from the date of this judgment, failing which execution can be taken out against them.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

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**U.DURGA PRASAD RAO, J**

Date: 24.06.2015

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