

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.975 of 2006

JUDGMENT

Second respondent-Andhra Pradesh State Road Transport Corporation represented by its Managing Director filed the present appeal aggrieved by the order dated 03.02.2005 in O.P.No.300 of 2002 on the file of Motor Accident Claims Tribunal-cum-District Judge, East Godavari, Rajahmundry, whereby and where-under a sum of Rs.3,57,000/- was granted with interest at 6% per annum for the injuries sustained by the petitioner (deceased Rekapalli Satyanarayana).

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the Tribunal.

3. The brief facts for the purpose of adjudication upon the controversy in the instant appeal are as under;

The petitioner was working as Assistant Engineer in Polavaram Barrage Investigation Division drawing a monthly salary of Rs.16,596/-. While he was waiting at RTC bus stop of Tallapudi on 27.11.2001 at about 9.30 AM., the first respondent drove the RTC bus bearing No.AP 9Z 9685 in a rash and negligent manner and dashed him, due to which, he fell down and came under the wheels of the said bus resulting in fractures to his right leg and right hand, which were grievous in nature. He was immediately shifted to Aravindham Orthopaedic Centre, Rajahmundry, where he had undergone treatment for two months as inpatient and he was still undergoing treatment on the date of making the instant claim petition. He sought a total sum of Rs.5,00,000/-as compensation by laying the claim under Section 166 of the Motor Vehicles Act, 1988 and the Rules framed there under and also pleading partial and permanent disability.

4. Before the Tribunal, the claim of the petitioner was dismissed against the first respondent for non-prosecution. The second respondent alone contested the claim and opposed it disowning the rash and negligent driving attributed to the first respondent and on the other hand, raising the plea of contributory negligence on the part of the petitioner in causing the accident. Certain details have been narrated in Clause (b) of paragraph 2 of the order under challenge, which are unnecessary to refer to in deciding the controversy herein.

5. The Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner examined himself as P.W.1 and also examined Dr. G. Aravindam as P.W.2 on commission and marked Exs.A1 to A7 besides Ex.X1 through P.W.2. The first respondent stepped into box as R.W.1 and no documents were marked.

6. The Tribunal, on appraisal of evidence of P.W.1 and R.W.1 and examining analytically the evidence of R.W.1 in paragraph 5 and also basing on the probability that R.W.1 has never made any attempt to report the incident to the police, which itself speaks that there was no negligence on the part of the petitioner, held issue No.1 in favour of the petitioner rejecting the plea of contributory negligent put forth by the RTC.

7. On issue No.2, the Tribunal, taking the age of the petitioner as 53 years and the salary at Rs.14,306/-per month as an Assistant Engineer working in Irrigation Department and 15% partial/ permanent disability basing on the evidence of P.W.2 observing that the amount of compensation towards partial/permanent disability or the loss of future earnings expected would be more than Rs.2,00,000/-, but restricted it to Rs.1,84,000/- towards loss of estate though, mentioning that no specific compensation separately was claimed by the petitioner under the head of permanent partial disability and equating it to that of partial/permanent disability besides granting Rs.25,000/- towards mental agony, pain and suffering; Rs.1,000/-towards transport charges; Rs.5,000/-towards extra nourishment; Rs.32,000/-towards loss of earnings and Rs.1,10,000/-towards medical expenses, thus making a total sum of Rs.3,57,000/- as compensation awarded to the petitioner.

8. It is the aforementioned order, which is under challenge in the instant appeal preferred by the Corporation contending in the grounds of appeal that the Tribunal did not properly appreciate the evidence on record and ought not to have taken 50% disability in fixing the compensation and ought not to have granted Rs.32,000/-towards loss of earnings and Rs.1,10,000/-towards medical expenses and also contended that the Tribunal did not examine the evidence of R.W.1 in proper perspective in assessing the plea of contributory negligence raised by it. Therefore, the appellant sought to set aside the order and decree passed by the Tribunal.

9. The second respondent, who is the driver of the RTC bus at the relevant time, is recorded as not a necessary party. During the pendency of the appeal, the petitioner, Rekapalli Satyanarayana, who is arrayed as respondent No.1 in the instant appeal, since expired, his legal representatives were brought on record as respondents 3 to 8 by the orders of this Court dated 03.02.2015 in MA CMA MP No.5771 of 2014.

10. Heard Sri S.V.Ramana, learned Standing Counsel for APSRTC-appellant and Sri Ch. Dhanamjaya, learned counsel for the first respondent.

11. Learned counsel for the appellant contends that the Tribunal was not right in determining the compensation of Rs.1,84,000/-towards partial/permanent disability since there is no tangible material on record. The second ground submitted by the learned counsel is that an amount of Rs.1,10,000/-towards medical expenses granted by the Tribunal is improper as there is no justification in granting it. These are the submissions made by the learned counsel for the appellant during the course of arguments.

12. On the other hand, learned counsel for the first respondent supported the order passed by the Tribunal contending that the was entitled to more than the amount granted by the Tribunal and even the interest was granted at 6% was not in accordance with the interest then prevailing and, therefore, sought to dismiss the appeal.

13. Perused the order under challenge impugned and the arguments of the respective parties.

14. So far as contributory negligence pleaded by the appellant is concerned, it

is, no doubt, true, R.W.1, who happens to be the driver of the bus at the relevant time, was examined, but nothing is brought out in his cross-examination to show that there was negligence on the part of the injured and an elaborate discussion was made by the Tribunal in arriving at that finding. One of the probabilities derived by the Tribunal was, the driver of the RTC bus, RW1, did not lodge any complaint at all with the police concerned attributing negligence to the . The finding recorded by the Tribunal since is well reasoned and well appreciated, does not suffer from any legal infirmity warranting interference. Therefore, the said finding recorded on the plea of contributory negligence is confirmed.

15. Concerning the amount of Rs.1,84,000/-granted towards partial/permanent disability, which is also included in the compensation towards loss of estate, a perusal of evidence of P.W.2 –Dr. G. Aravindam would show that in fact he has issued Ex.A7-wound certificate describing the disability at 50%. Be that as it may, irrespective of the fact that if not 50%, even 15% is taken into consideration as partial/permanent disability, still, the amount would work out more than Rs.2,00,000/-as rightly observed by the Tribunal. Therefore, the amount of Rs.1,84,000/-granted by the Tribunal cannot be viewed as excessive and in fact, it has to be construed as just and adequate keeping in view, the salary drawn by the injured on the date of accident. So far as the medical expenses at Rs.1,10,000/- granted by the Tribunal are concerned, the injured submitted bills under Ex.A5 amounting to Rs.40,000/- to Rs.50,000/- being paid by him to P.W.2 as admitted by P.W.2, but the whole of the same was not covered by Ex.A5 and the Tribunal granted Rs.1,10,000/-observing that the bill amount would be nearly Rs.90,000/- covered by Ex.A5. Even otherwise, in view of the sufferance undergone and the inconvenience caused to the injured because of the injuries, the amount of Rs.1,10,000/-granted by the Tribunal towards medical expenses is not at all excessive or arbitrary and, thus, the compensation granted by the Tribunal at Rs.3,57,000/- cannot be construed as excessive or arbitrary.

16. Hence, there is no merit in the appeal. Consequently, the appeal stands dismissed. There shall be no order as to costs. 17. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand dismissed.

A. SHANKAR NARAYANA, J

10th March, 2015

sj