

HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO

M.A.C.M.A. No. 2037 OF 2005

DATED 9TH December, 2015

BETWEEN

Macharla Ramachander

...Appellant

And

The Managing Director, APSRTC,
Hyderabad

...Respondent.

HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO

M.A.C.M.A. No. 2037 OF 2005

JUDGMENT:

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The injured claimant in O.P.No.939 of 2001 on the file of the Motor Vehicle Accident Claims Tribunal-cum-V Additional District Judge (FTC) Ranga Reddy District, filed the present appeal. He filed the aforesaid OP claiming compensation of Rs.3,50,000/- on account of the injuries suffered by him in a motor vehicle accident that occurred on 26.5.2001. It was alleged in the claim petition that on 26.5.2001 at about 9.15 AM when the claimant along with his son was going on a motorcycle bearing No.AP 24A 7605 from Ghanpur to Pathipaka village to attend his relative's marriage and when they reached Pathipaka village at about 9.15 a.m., a APSRTC bus bearing No. AP 10Z 4599 of Warangal Depot-I came from Hanamakonda and being driven in rash and negligent manner at

high speed, dashed the said motor cycle, due to which, both the appellant/claimant and his son fell down and sustained multiple injuries. In the said accident, the appellant/claimant suffered fracture to right knee and other multiple injuries all over the body. Immediately after the accident, he was shifted to Jaya Hospital, Hanamakonda, Warangal and thereafter to Yashoda Super specialty Hospital, Somajiguda, Hyderabad for better treatment, wherein he has undergone two major operations on different spells and incurred huge amount for treatment.

The respondent-APSRTC filed counter before the Tribunal denying the averments made in the claim petition in general. It was stated that there was no fault on the part of the driver of the bus and that the compensation claimed was excessive.

Based on the above pleadings, the Tribunal framed the following issues for trial.

1. Whether the accident took place on 26.5.2001 at about 9.15 a.m. at Pathipaka village, Parkal, Warangal district PS Parkal on account of the rash and negligence of the driver of the RTC bus bearing No.AP 10Z 4599 of Warangal Depot-I dashed the Hero Honda bearing No. AP 24 A 7605 ?
2. Whether the petitioner is entitled to claim compensation and if so for how much amount. ?
3. To what relief ?

During the course of trial, the appellant/claimant himself was examined as P.W.1 and a doctor was examined as P.W.2 and Exs.A.1 to A7 were marked on their behalf. On behalf of the

respondent-APSRTC, R.W.1 was examined, however, no documentary evidence was filed on its behalf.

On a thorough evaluation of the evidence on record, the Tribunal found that the accident occurred due to rash and negligent driving of the bus by its driver.

In the process of assessing the compensation, the Tribunal noticed that the appellant-claimant was running kirana business and earning Rs.4,000/- per month. He incurred Rs.1,50,000/- towards treatment and medicines. The Doctor who was examined as P.W.2 deposed that he found an old commuted fracture of both bones of right leg with mal-union, shortening and severe restriction of movements of right knee except about 10 degrees and that shortening is by 2 inches and estimated the disability of the appellant-claimant at about 55% of right lower limb which is partial and permanent in nature. He also deposed that he is a retired Professor and Civil Surgeon of Orthopedics in Osmania Medical College and Osmania General Hospital. In the cross examination he deposed that he did not treat the appellant-claimant.

The evidence before the Tribunal reads that the appellant-claimant was treated in the Yashoda Hospital from 27.5.2001 to 19.6.2001 and again from 18.09.2001 to 24.09.2001. The Tribunal has taken the permanent partial disability at 30% and monthly income at Rs.1,500/-. By applying the multiplier '17', the Tribunal awarded compensation of Rs.92,000/- towards earnings. For the injuries sustained by the appellant-claimant, the Tribunal awarded an amount of Rs.26,000/- towards fracture and simple injuries, Rs.50,000/- towards treatment and

medicines, Rs.92,000/- towards disability and Rs.,7,000/- towards extra nourishment, attendant and transport charges. Thus in all the Tribunal awarded compensation of Rs.1,75,000/-.

The learned Counsel for the appellant submits that no amount was awarded by the Tribunal towards pain and suffering and loss of earnings during the period of hospitalization for more than 61 days and therefore the compensation deserves enhancement in the present appeal.

In the instant case, the accident occurred on 26.5.2001. The case of the appellant is that he was doing kirana business. He was inpatient in the hospital for nearly 61 days. In the circumstances, the loss of earnings would come to Rs.5,000/-. The appellant was inpatient twice and he suffered fracture to right leg. Therefore, the Tribunal should have awarded some amount towards pain and suffering and this Court feels that a sum of Rs.25,000/- towards pain and suffering meets the ends of justice. An amount of Rs.5,000/- also deserves to be awarded towards loss of earnings. Hence, the compensation awarded by the Tribunal is enhanced from Rs.1,75,000/- to Rs.2,00,000/- and the enhanced amount shall carry interest at 9% per annum from the date of the petition till realization.

The appeal is accordingly partly allowed. Miscellaneous petitions pending consideration if any in the appeal shall stand closed in consequence. No order as to costs.

JUSTICE A. RAMALINGESWARA RAO

DATED 9th December, 2015.
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