

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.2300 OF 2004

JUDGMENT:

The instant appeal is preferred by the Karnataka State Road Transport Corporation, represented by Depot Manager, Hospet Depot, Karnataka (for short, 'Corporation'), which is the sole-respondent in O.P. No.92 of 1997 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Mahabubnagar District (for short, 'the Tribunal') aggrieved by the order and decree dated 23.01.2004, passed in the said original petition granting compensation of Rs.50,000/-, as against the claim of Rs.1,20,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the injuries said to have sustained by the respondent herein, who is petitioner in the said original petition, on the ground that the said compensation is high and excessive.

2. The appellant herein is the sole-respondent, while the sole-respondent herein is the petitioner-claimant in the original petition.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The fact-situation occurring in the instant case is that on 21.02.1996 at about 5-00 p.m., while the

petitioner was proceeding on his motorcycle near Chandrayanguda village, a bus belonging to the respondent-Corporation bearing registration No.KA 34F 207 coming from Hyderabad driven by its driver at high speed and in a rash and negligent manner, dashed the motorcycle, due to which, he fell down and sustained injuries. The Station House Officer, Kothur Police Station, registered a case in Crime No.23 of 1996 against the driver of the bus and investigated into. The petitioner claiming that he was 35 years old, working as Labour Contractor in Tirumala Textiles, Nandigama earning Rs.5,000/- per month and also claiming that he became permanently disabled and spent Rs.35,000/- towards treatment, sought a compensation of Rs.1,20,000/- from the respondent.

5. Respondent filed counter opposing the claim by raising various pleas, also contending that the petitioner contributed to the accident and the claim is highly excessive and arbitrary and sought to dismiss the claim petition.

6. Basing on the said pleadings, the Tribunal framed the following four issues about the responsibility for the accident:

"1) Whether the accident occurred due to rash and negligent driving of the driver of the

Karnataka bus bearing No.KA 34F 207 ?

2) Whether the petitioner is entitled to claim compensation from the respondent, and if so to what amount ?

3) Whether the respondent is liable to pay the compensation amount ?

4) To what relief ?"

7. During enquiry, the petitioner examined himself as P.W.1 besides examining Dr. A.Anand as P.W.2 and marked Exs.A.1 to A.6 to prove his entitlement for the claim he laid; whereas, on behalf of the respondent, the driver of the RTC bus was examined as R.W.1 and a certificate said to have issued by the Station House Officer, Kothur Police Station, was marked as Ex.B.1.

8. The Tribunal, appreciating the evidence on record in the light of the pleadings, more particularly, the pleadings of the respondent, disbelieved the evidence of R.W.1, since he asserted in his evidence that the vehicle of the petitioner never came into contact with the RTC bus and the petitioner suddenly applied brakes, on account of which, he fell aside the road and sustained injuries. But as seen from the counter filed by the respondent-Corporation, it is categorically mentioned that the petitioner himself was responsible for the accident as he

was driving the motorcycle without any driving licence and he came into contact with the other vehicle, and, therefore, it is not liable to pay any compensation to the petitioner. The Tribunal having believed the evidence of P.W.1 and the contents of Ex.A.1-F.I.R. and disbelieving the evidence of R.W.1 and contents of Ex.B.1-certificate said to have issued by the Station House Officer, Kothur Police Station, assigning reasons therefor, held that only due to rash and negligent driving of the driver of the bus, the accident had occurred and, thereby, held it in favour of the petitioner.

9. On issue Nos.2 and 3, the Tribunal, having examined the contents of Exs.A.2 to A.6, discarded the disability certificate Ex.A.2 issued by P.W.2 and finding that both the bones of left leg of the petitioner were fractured, granted a total sum of Rs.50,000/- as compensation with interest at 9% per annum.

10. It is the aforesaid order which is under challenge in the instant appeal filed by the respondent-Corporation contending in the grounds that the Tribunal having discarded Ex.A.3 by observing that it is a fabricated document, ought not to have granted Rs.50,000/- holding that there was fracture of both bones of left leg, and, thus, the amount of Rs.50,000/- awarded by the Tribunal was based on a fanciful grounds. It is also stated that the Tribunal went wrong in observing that the

petitioner underwent ordeals of treatment, experiencing pain and suffering, incurring expenditure for medicines, transport charges, extra nourishment and granting Rs.50,000/- as reasonable compensation and even awarding 9% interest on the compensation and sought to set aside the order and decree under challenge.

11. Perused the order of the Tribunal and also the evidence on record both, oral and documentary, let in by the parties. It is not in dispute that Ex.A.1-F.I.R. was registered against the driver of the RTC bus. It was lodged by the petitioner himself on 21.02.1996, on which day, the accident had occurred as seen from the endorsement made therein by the Assistant Sub Inspector of Police, Kothur Police Station, and the complaint was received at 6-00 p.m. on that evening. Thus, the circumstance that the complaint was lodged immediately after taking place of the accident, certainly, stands adverse to the plea raised by the respondent that the petitioner did not come into contact with the RTC bus and having fell aside the road he sustained injuries.

12. The Tribunal having noted what was raised in the counter filed by the respondent and the evidence of P.W.1 on record, the Tribunal, disbelieved the evidence of R.W.1 and also Ex.B.1. A perusal of Ex.B.1 would show that the F.I.R. was referred as accidental and that no negligence was established against the driver of the bus,

Sri Siva Saranna. Though, R.W.1 exhibited the said document as Ex.B.1, but he has not taken any steps to examine the author of Ex.B.1. Certainly, R.W.1 is not competent to prove the contents of Ex.B.1. It is only the person who said to have issued Ex.B.1 is competent to prove the contents therein. Therefore, the finding recorded by the Tribunal in rejecting Ex.B.1 cannot be faulted.

13. Hence, the finding recorded on issue No.1 by the Tribunal holding it against the respondent and in favour of the petitioner cannot be disturbed.

14. Concerning issue Nos.2 and 3, the approach of the Tribunal cannot be commented as the Tribunal has rightly discarded the medical record of Geetha Nursing Home and only believed to the extent of record relating to Uday Hospital, Hyderabad, where he has undergone treatment for four days and having found that both the bones of left leg of the petitioner were fractured, rightly awarded a total sum of Rs.50,000/- under all the heads. Therefore, even that finding recorded by the Tribunal in awarding Rs.50,000/- as compensation to the petitioner cannot be interfered with. Hence, there is absolutely no merit in the instant appeal.

15. Accordingly, the instant appeal is dismissed. There shall be no order as to costs.

16. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand disposed of.

A. SHANKAR NARAYANA, J

23rd November, 2015

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