

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.747 OF 2009

JUDGMENT:

This appeal is filed by the claimant assailing the judgment and award dated 07.9.2006 passed in M.V.O.P. No.87 of 2003 on the file of the Special Judge for the trial of offences under SCs & STs (PoA) Act-cum-VI Additional Metropolitan Sessions Judge-cum-XX Additional Chief Judge, Secunderabad.

2. The parties hereinafter will be referred to as they are arrayed before the Tribunal to avoid confusion.

3. The facts leading to filing of the present petition are briefly as follows: On 21.9.2002 at 9.30 PM the petitioner and his friends were proceeding to Srisailam in a car bearing No.AP 9A 5471. When they reached Vatwarpally village near Mahaboobnagar District, the driver of RTC bus bearing No.AP 10Z 7092 had driven the same in a rash and negligent manner and dashed against the car from opposite direction. Due to the accident, the petitioner had sustained grievous injuries on head, left eye, ribs, spinal cord and other parts of the body. Immediately after the accident, the petitioner was shifted to Apollo Hospital, Hyderabad, wherein he took treatment. The petitioner also took treatment in New City Hospital, Hyderabad and spent huge amount towards medicines and treatment. At the time of accident, the petitioner was earning Rs.45,000/- per month by doing pharmaceutical business. Therefore, the respondent is liable to pay compensation to the petitioner. Hence, the petition is filed claiming compensation of Rs.4,85,500/- from the respondents.

4. The petitioner, by filing a memo, not pressed the petition against the respondent No.1-Depot Manager, APSRTC, Atchampet Depot, Mahaboobnagar District. The petition against the respondent No.1 was, therefore, dismissed by the Tribunal in I.A.No.289 of 2005.

5. The second respondent filed counter denying material

averments *inter alia* contending that the accident occurred due to rash and negligent driving of the driver of Santro car. There was no negligence on the part of the driver of the APSRTC bus. The amount of compensation claimed by the petitioner, under various heads, is highly excessive and exorbitant. Hence, the petition may be dismissed.

6. Basing on the above pleadings, the Tribunal framed the following issues:

- 1) Whether the petitioner met with accident due to collusion (*sic* collision) between Santro Car bearing No.AP 9A 5471 and APSRTC bus bearing No.AP 10Z 7092 resulting into injuries to the petitioner?
- 2) Whether the accident did not occur due to the rash and negligent driving of the APSRTC bus bearing No.AP 10Z 7092?
- 3) Whether the petitioner is entitled for compensation? If so, to what amount and from whom?
- 4) To what relief?

7. During the course of trial, on behalf of the petitioner, P.Ws.1 to 3 were examined and Exs.A1 to A100 were marked. On behalf of the second respondent, no oral or documentary evidence was adduced.

8. Basing on the oral and documentary evidence available on record, the Tribunal allowed the petition in part by awarding compensation of Rs.1,71,444/- with proportionate costs and interest at the rate of 6% per annum from the date of petition till the date of deposit, directing the respondent No.2 to deposit the amount within 30 days from the date of the judgment. Being not satisfied with the amount of compensation awarded, the claimant preferred the appeal.

9. Sri J.Prabhakar, learned counsel for the appellant / claimant submitted that the Tribunal awarded meager amount towards pain and suffering. He further submitted that no amount was granted under the head 'attendant allowance'. He also submitted that the Tribunal ought to have granted rate of interest at 7.5% per annum. Per contra, Sri N.Vasudeva Reddy, learned standing counsel for the second respondent submitted that the compensation awarded by the Tribunal

is just and reasonable.

10. The Tribunal gave a specific finding that the accident occurred due to rash and negligent driving of the driver of APSRTC Bus. The second respondent has not filed appeal challenging the finding of the Tribunal so far as the manner of accident is concerned. The oral testimony of P.W.1 coupled with recitals of Exs.A1, A3 and A4 certified copies of F.I.R., accident report and the charge sheet respectively, clearly reveals that the accident occurred due to rash and negligent driving of the driver of APSRTC Bus. The finding recorded by the Tribunal has attained finality. Therefore, I am of the considered view that the accident occurred due to rash and negligent driving of the driver of the APSRTC Bus.

11. The contention of learned counsel for the appellant is that the Tribunal has granted meager amount towards pain and suffering. A perusal of para 16 of the judgment reveals that the Tribunal awarded an amount of Rs.25,000/- towards head injury and an amount of Rs.10,000/- towards pain and suffering. Thus, an amount of Rs.35,000/- was awarded towards pain and suffering showing it under two heads. Therefore, the contention of learned counsel for the appellant that a meager amount was awarded under the head of pain and suffering is factually not sustainable.

12. Learned counsel for the appellant strenuously submitted that the Tribunal ought not to have deducted 1/3rd of the income towards personal expenses of the injured-claimant. It is not in dispute that the Tribunal has deducted 1/3rd of the income towards personal expenses of the appellant-claimant after determining the annual income of the appellant at Rs.2,75,207/- basing on the income tax returns. In cases of deaths, Tribunal can deduct 1/3rd of the annual income of the deceased towards his personal expenditure while calculating loss of dependency. Deducting 1/3rd of the income in injury cases is not

legally sustainable. The Tribunal has committed error while deducting 1/3rd of the income of the appellant-claimant towards his personal expenses. Therefore, the appellant-claimant is entitled for an amount of Rs.69,000/- (Rs.23,000 X 3) towards loss of earnings for three months instead of Rs.45,000/-. Due to the injuries, the petitioner might have engaged somebody to look after him in the Hospital. Hence, I am inclined to grant an amount of Rs.5,000/- towards attendant charges. The Tribunal has granted just and reasonable compensation under the other heads. There are no grounds much less valid grounds to enhance the compensation awarded under the other heads. Thus, the total enhancement of compensation is Rs.29,000/- (Rs.24,000/- under loss of earnings and Rs.5,000/- towards attendant charges).

13. Learned counsel for the appellant submitted that the Tribunal has awarded interest at the rate of 6% per annum only. As rightly pointed out by the learned counsel for the appellant, rate of interest awarded by the Tribunal is not just and reasonable. Taking into consideration, the prevailing rate of interest as on the date of accident, the rate of interest is enhanced to 7.5% per annum instead of 6% per annum.

14. In the result, the appeal is allowed in part, enhancing the quantum of compensation from Rs.1,71,444/- to Rs.2,00,444/- (Rupees Two lakhs four hundred and forty four only) with proportionate costs and interest at 7.5% per annum through out. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 21-1-2015
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