

SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.3159 OF 2005

JUDGMENT:

Aggrieved by the dismissal of the claim for Rs.2,00,000/-

laid under Section 166(1)(a) of Motor Vehicles Act, 1988 read with Rule 455 of the Andhra Pradesh Motor Vehicles Rules 1989 towards compensation for the injuries sustained by the petitioner in a road accident, she preferred the instant Civil Miscellaneous Appeal challenging the order and decree, dated 07-07-2005, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum -

VII Additional District Judge (Fast Track Court), Nizamabad, Bodhan, in M.V.O.P. No.1148 of 2001.

2. The appellant herein, who sustained injuries in the road accident, is the petitioner in the O.P. before the Tribunal while respondent Nos.1 and 2 i.e., the Depot Manager of Andhra Pradesh State Road Transport Corporation (APSRTC), Banswada, Nizamabad District and Managing Director of APSRTC, Musheerabad, Hyderabad, respectively, are respondent Nos.1 and 2 respectively.

3. For the sake of convenience, the parties herein are hereinafter referred to as arrayed in the O.P. before

the Tribunal.

4. The facts would show that on 09.12.2000, while the petitioner was travelling in the APSRTC bus bearing No.AP-Z-8882 from Banswada to Hyderabad, and, when it reached Hyderabad, it was stopped at Mahathma Gandhi Bus Station, Gowliguda (MGBS) at the alighting point, and while she was about to get down from the bus, since driver of the bus started it rashly moving ahead, she sustained fracture of her right foot and multiple injuries all over her person. She was immediately shifted to Osmania General Hospital, Hyderabad (OGH), by her husband on being informed through phone and due to Ramzan festival, complaint with the police was lodged belatedly. She states that she is unable to examine the patients as she is a private medical practitioner at Banswada, and, therefore, sought the aforesaid amount towards compensation.

5. Common written statement was filed by both the respondents i.e., APSRTC denying the material allegations and requesting to dismiss the claim petition.

6. Based on the rival pleadings, the Tribunal framed the following three (3) issues in order to determine compensation as well as negligence in taking place of the accident.

“1. Whether the accident was due to rash and negligent driving of the driver of the RTC bus bearing No.AP-Z-8882?

2. Whether the petitioner is entitled for compensation? If so, to what extent and from whom?

3. To what relief?”

7. During enquiry, the petitioner, besides examining herself as PW.1, examined her husband Dr. Mohd. Naseeruddin as PW.2 and marked Exs.A-1 to A-5. On behalf of the insurer, no oral or documentary evidence was adduced.

8(a) The Tribunal has taken cognizance of the fact that there was delay of one and half month in lodging the First Information Report by the husband of the petitioner, who was examined as PW.2, and the explanation offered by him that since PW.1 was bedridden and he was attending to her and further as it was Ramzan festival, he was also busy with casualties in Osmania General Hospital, he could not lodge the complaint, as unbelievable since there is outpost police station at MGBS itself as per the admission made by PW.2 himself and he could have lodged the complaint there itself.

(b) Further observation made by the Tribunal has been that in Ex.A-2, photostat copy of the medico legal

record, filed by the petitioner, in the column relating to 'brief history' of the case, it was recorded that the petitioner alleged to have fallen while getting down from the bus on 09.12.2000 at 6-O' clock at Medak and, thus, it contradicts version of the petitioner taken in the claim petition, and, therefore, the Tribunal opined that the theory propounded by PWs.1 and 2 that the petitioner sustained fracture at MGBS on 09.12.2000 at 10.00 p.m. is most untenable.

(c) The Tribunal further observed that PW.2, since working in Osmania General Hospital, it is not difficult for him to procure a certificate like the original of Ex.A-2 and, more so, when the petitioner has not chosen to examine the doctor who treated her and issued Ex.A-2 at OGH.

(d) Based on the above circumstances, the Tribunal disbelieved the case of the petitioner and dismissed the claim petition.

9(a) It is the aforesaid order, which is under challenge in the instant appeal contending in the grounds of appeal that the Tribunal ought to have considered the fact that the Station House Officer, Afzalgunj Police Station, Hyderabad has registered a crime against the driver of the APSRTC bus and even filed charge sheet marked as Ex.A-3, which itself is a conclusive proof of taking place of accident. It is further stated that the

Tribunal went wrong in appreciating the evidence on record, more particularly, the fact that the petitioner got her admitted and treated in OGH, which is a Government institution, situated near by the place of accident.

(b) It is also stated that the Tribunal, somehow, failed to appreciate the condition of the petitioner with severe pain and agony due to the accident and she does not know what the duty doctor has written in the medical certificate as to place of accident and if at all the duty doctor has made some error, for which the petitioner cannot be made scapegoat since she has specifically mentioned that the accident had taken place at Hyderabad due to rash and negligent driving of the APSRTC bus driver.

(c) It is, still, further stated that the Tribunal has drawn a wrong inference that PW.2, since employee in OGH, must have fabricated the medical certificate; which is nothing but figment of imagination without any basis which was not even suggested to PW.2 by the petitioner and in fact, PW.2 is a responsible servant and never resorts to such acts of fabrication and if at all any such fabrication.

10. Perused the order under challenge and the evidence on record.

11. The learned Tribunal based on two aspects dismissed the claim petition. The first being delay in lodging FIR by PW.2, who is none other than the husband of the petitioner, on the ground that there is police outpost provided at MGBS itself and there was no reason for PW.2 to lodge the complaint with such an inordinate delay and that the explanation offered by PWs.1 and 2 is unsatisfactory, and, therefore, viewed the claim petition with suspicion. The second aspect relates to the inconsistency between the version projected in the claim petition and the version recorded in the 'brief history' shown in the medico legal record.

12. The case of the petitioner has been that on 09.12.2000 she boarded the APSRTC bus bearing No.AP-Z-8882 at Banswada to come down to Hyderabad as her husband was working in OGH at Hyderabad and when the bus reached MGBS, Gowliguda, Hyderabad, at alighting point, while she was getting down, the driver of the bus moved it ahead without taking proper care, due to which, she fell down and sustained fracture to right foot and other injuries on her person. In the medico legal record, it is recorded by the doctor that the fall had taken place while the petitioner was getting down from the APSRTC bus at 6 O' clock at night on 09.12.2000. So far as date of accident is concerned, it is one and the same, but place and timing are varying and on that score also,

the Tribunal disbelieved the claim of the petitioner and dismissed it.

13. Without expressing anything on the findings recorded by the Tribunal, I am of the opinion that it would be proper if the matter is remitted to the Tribunal for giving opportunity to the parties to adduce further evidence in examining whether the version shown in medico legal record was recorded by inadvertence or otherwise.

In that direction, the petitioner is at liberty to lead further evidence by examining the doctor, who has recorded the medico legal record and also to examine the investigating officer, who has filed the charge sheet, if available. It is also open to the petitioner to get the disciplinary proceedings, if any, initiated against the driver of the APSRTC bus since a criminal case was registered against him and even a charge sheet was filed as it would help in clarifying the inconsistency referred to above. Concerning the delay in lodging FIR, it is for the Tribunal to once again decide the issue afresh.

14. Accordingly, the Civil Miscellaneous Appeal is allowed and the matter is remitted to the Tribunal for fresh disposal, as indicated above, and the impugned order is set aside. The Tribunal is directed to dispose of the matter within a period of six (6) months from the date of receipt of judgment as it is an old matter relating to the year 2001. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal stand disposed of.

A. SHANKAR NARAYANA, J

March 11, 2016.

NOTE:

1. Dispatch the order forthwith.
2. Mark a copy of the order to the Tribunal concerned.

(BO) PV