

**HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO**

**M.A.C.M.A. No.282 of 2009**

**JUDGMENT:**

Aggrieved by the Award dt:15.10.2008 in M.V.O.P.No.180 of 2006 passed by the Chairman, M.A.C.T-cum-X Additional District Judge(FTC), Guntur at Narasaraopet (for short 'the Tribunal'), the claimant preferred the instant appeal.

2) The factual matrix of the case is thus:

a) The case of the claimant is that on 01.06.2005 at about 8:00pm, while he along with some others was travelling in a tractor to go to Polepalli to attend a marriage and when the said tractor reached in between Bodalaveedu- Mandadhi, one RTC bus bearing No.AP 9 Z 5132 came in opposite direction being driven by its driver at high speed and in a rash and negligent manner and dashed the tractor. In the resultant accident, the claimant sustained fracture of right leg. Immediately, he was shifted to Government General Hospital, Macherla and from there to Government General Hospital, Guntur, where his right leg was amputated below knee and steel rods were inserted to his right thigh. It is averred that accident was occurred due to rash and negligent driving by the driver of RTC bus. On these pleas, he filed M.V.O.P.No.180 of 2006 under Sec.140 and 163-A of Motor Vehicles Act, 1988 (for short "the Act") against respondent/APSRTC and claimed Rs.3,00,000/- as compensation.

b) Respondent/APSRTC filed written statement denying all the averments made in the claim petition and urged to put the claimant to strict proof of the same. It further denied the age, avocation and income of the claimant. It contended that the accident was not occurred due to the negligence of RTC Bus driver but due to the rash and negligent driving by the driver of tractor. Finally, it contended that compensation claimed by the claimant is highly excessive and thus prayed to dismiss the OP.

c) During trial, PWs.1 and 2 were examined and Exs.A1 to A5 were marked on behalf of claimant. Ex.X.1—case sheet was marked. No oral or documentary evidence was adduced on behalf of respondent.

d) The Tribunal on appreciation of both oral and documentary evidence held that the driver of the RTC bus was responsible for the accident and ultimately awarded Rs.1,58,500/- as compensation against respondent with proportionate costs and interest @ 7.5 p.a under different heads as follows:

|                                             |               |
|---------------------------------------------|---------------|
| Towards 70% disability                      | Rs.1,15,500/- |
| Pain and suffering                          | Rs. 2,000/-   |
| Conveyance, attendant and extra nourishment | Rs. 6,000/-   |
| Hospitalization charges                     | Rs. 20,000/-  |
| Medical expenditure                         | Rs. 15,000/-  |
|                                             | -----         |
| Total:                                      | Rs.1,58,500/- |
|                                             | -----         |

Hence, the appeal by claimant.

- 3) The parties in the appeal are referred as they stood before the lower Tribunal.
- 4) Heard arguments of Sri P.Prabhakara Rao, learned counsel for appellant/claimant and Sri P.Durga Prasad, learned standing counsel for APSRTC/respondent.
- 5 a) Challenging the compensation awarded under different heads as grossly inadequate, learned counsel for appellant/claimant argued that the Tribunal has not taken into consideration the facts and evidence in proper perspective for computation of compensation. In expatiation, he firstly argued that the claimant suffered fracture of his right femur which led to amputation of his right leg above knee and for this purpose he underwent surgeries twice, first in Government General Hospital, Guntur where below knee amputation was done and thereafter due to infection, he underwent above knee

surgery in the Hospital of PW.2 and on all those occasions he experienced excruciating pain and suffering but the Tribunal granted a pittance of Rs.2,000/- for pain and suffering which needs to be revised.

b) Secondly he argued that the claimant incurred medical expenditure of about Rs.70,000/- but the Tribunal awarded only Rs.35,000/-.

c) Thirdly, he argued that the Tribunal accepted the disability at 70% as deposed by PW.2 but failed to consider that the disability deposed by PW.2 is only a physical disability. He argued that due to amputation of his right leg above knee, the claimant was totally incapacitated to do his agricultural works and therefore, in terms of functionality he suffered 100% disability. The Tribunal ought to have computed compensation considering his disability as 100%. He thus prayed to allow the appeal and revise the compensation.

6) Per Contra learned standing counsel for RTC/respondent supported the award and argued that the compensation awarded under different heads was just and reasonable and there is no need to revisit the same.

7) In the light of above rival arguments, the point for determination in this appeal is:

*“Whether the compensation awarded by the lower Tribunal was just and reasonable or needs reassessment?”*

8) **POINT:** The accident, involvement of Tractor bearing No.AP 27 U 113 and RTC bus bearing No.AP 9 Z 5132 and injuries to the claimant and consequent amputation of his right leg above knee are all admitted facts. The dispute is only with regard to the quantum of compensation.

9) On a careful analysis of the facts and evidence on record, this Court finds force in

the submission of learned counsel for appellant/claimant. The evidence clearly shows that the claimant suffered fracture of his right thigh bone for which he underwent operations twice. Firstly, in Government General Hospital, Guntur and later in Sanjivi, Orthopedic and Physiotherapy Hospital, Guntur of PW.2 and ultimately his right leg was amputated above knee. It is needless to emphasize that the claimant experienced physical and mental pain and agony due to amputation of his right leg. However, unfortunately, the Tribunal awarded only Rs.2,000/- for pain and suffering. Considering the gravity of injury and its impact on the claimant both physically and mentally, compensation for pain and suffering is enhanced to **Rs.20,000/-**.

a) Sofaras medical expenditure is concerned, the Tribunal awarded Rs.35,000/- (Rs.20,000/- + Rs.15,000/-). Having regard to the grievous nature of the injuries and consequent treatment in two hospitals and also on perusal of Ex.A.4—medical bills, medical expenditure is enhanced to **Rs.45,000/-**.

b) Sofaras compensation for disability is concerned, PW.2 estimated the disability at 70% whereas under Ex.A.5 the District Medical Board certified the disability at 70%. Be that as it may, the disability mentioned in Ex.A.5 as well as by PW.2 is only a physical disability. Basing on the adverse impact of physical disability on his earning power, functional disability has to be fixed. The claimant is said to be an agriculturist. Having regard to the nature of his occupation, the functional disability can be accepted as 90% in this case. Thus the compensation for loss of earning power due to disability works out at **Rs.1,48,500/-** (Rs.15,000 x 11 x 90%).

Thus, the total compensation payable to the claimant under different heads is as follows:

|                                             |               |
|---------------------------------------------|---------------|
| Towards disability                          | Rs.1,48,500/- |
| Pain and suffering                          | Rs. 20,000/-  |
| Conveyance, attendant and extra nourishment | Rs. 6,000/-   |

|                     |               |
|---------------------|---------------|
| Medical expenditure | Rs. 45,000/-  |
|                     | -----         |
| Total:              | Rs.2,19,500/- |
|                     | -----         |

So the compensation is enhanced by Rs.61,000/- (Rs.2,19,500/- minus Rs.1,58,500/-).

- 10) In the result, this M.A.C.M.A, is partly allowed and ordered as follows:
- (i) Compensation is enhanced by **Rs.61,000/-**(Rs.2,19,500/- minus Rs.1,58,500/-) with proportionate costs and interest @ 7.5% per annum from the date of O.P., till the date of realization against the respondent.
  - (ii) Respondent is directed to deposit the compensation amount within two(2) months from the date of this Judgment, failing which execution can be taken out against it.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 03.06.2016

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