

**THE HON'BLE SMT JUSTICE ANIS**

**C.M.A.No. 4383 of 2004**

**JUDGMENT:**

This appeal is filed by the appellant/petitioner under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the order and decree dated 10.09.2004 passed by the Chairman, Motor Accident Claims Tribunal-cum-XI Additional Chief Judge, City Civil Court (Fast Track Court), Hyderabad, in O.P.No.548 of 2002, awarding compensation of Rs.42,800/- against the respondents.

2. The appellant/petitioner filed the above Original Petition under Section 166 of the Act read with Rule 514 of A.P.M.V. Rules, 1964 and Section 140(c) of the Act claiming compensation of Rs.1,20,000/- on account of the injuries sustained by him in a motor vehicle accident that occurred on 11.06.2001.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4. The brief averments made in the petition are as follows:

The petitioner is a practicing advocate in the City Civil Courts, Hyderabad. On 11.06.2001, he was going to attend the Courts on a

scooter bearing registration No.AP 10 7730 and when he reached near the Mahatma Gandhi Bus Station, one A.P.S.R.T.C. bus bearing registration No.AP 10Z 4477 dashed him, due to which, he fell down and sustained a fracture to his wrist. On a complaint given by his wife, the Afzulgunj police registered a case in Crime No.262 of 2001 against the driver of the bus. The petitioner was admitted in C.C. Shoroff Hospital and he also took treatment in other hospitals. According to him, the accident occurred due to rash and negligent driving of the driver of the bus. Therefore, prayed the Court to grant compensation of Rs.1,20,000/-.

5. In the counter, the respondents contended that there is no rash and negligent driving on the part of the driver of the bus and the accident occurred only due to the negligence of the petitioner. It is also contended that the petitioner received only simple injuries and he has not suffered any disability. Therefore, prayed the Court to dismiss the petition.

6. Basing on the above pleadings, the Tribunal framed three issues. To substantiate his claim, the petitioner got examined himself as P.W.1 and also got examined the doctor, who treated him, as P.W.2, and got marked Exs.A.1 to A.52. On behalf of the respondents, no oral or documentary evidence was adduced.

7. After considering the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the RTC bus, and awarded compensation of Rs.42,800/- along with interest at 9% p.a.

8. Not satisfied with the compensation awarded by the Tribunal, the petitioner filed the present appeal.

9. Learned counsel for the petitioner argued that the Tribunal has not considered properly the disability suffered by the petitioner. The compensation awarded is very meager. Though the doctor-P.W.2 has stated that the petitioner suffered 35% disability, the same was not taken into consideration by the Tribunal. Therefore, prayed the Court to grant more compensation.

10. On the other hand, the learned standing counsel for the RTC argued that the petitioner has not suffered any disability. The Tribunal rightly disbelieved the evidence of the doctor-P.W.2 with regard to the disability of the petitioner. The compensation granted by the Tribunal is just and reasonable. Therefore, prayed the Court to dismiss the appeal.

11. Having regard to the submissions made by the learned counsel appearing for both the parties, the points which are to be decided in this appeal are as follows:

- 1) Whether the compensation awarded by the Tribunal is just and reasonable?
- 2) Whether the appellant/petitioner is entitled for enhancement of compensation as prayed for?

**POINTS 1 & 2:**

12. On perusal of the evidence on record, there is no dispute with regard to the fact that the accident occurred due to rash and negligent driving on the part of the driver of the bus. The main grievance of the petitioner is that the evidence of doctor-P.W.2 with regard to the disability was not considered. P.W.2 issued Ex.A.38-disability certificate. According to him, the disability is 35%. Exs.A.51 and A.52 are the prescriptions issued by P.W.2. In Ex.A.51, it is clearly stated that there is a mall union of the fracture and this document does not disclose any suggestion of taking x-ray. Ex.A.52 also does not disclose such fact. From the above, it is clear that these two documents i.e. Exs.A.51 and A.52 were prepared by P.W.2, as per the request of the petitioner subsequent to the filing of the petition. Therefore, both Exs.A.51 and A.52 were disbelieved by the Tribunal. Further, the Tribunal gave a specific finding that there would not be

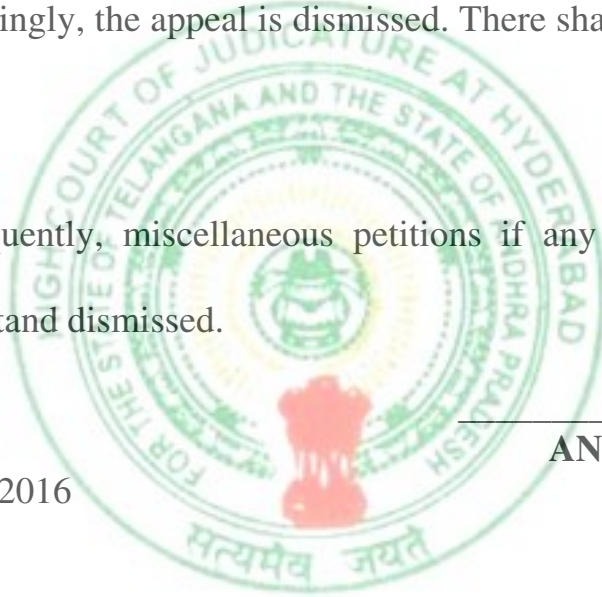
any disability due to the fracture to the wrist. There is no cogent evidence regarding the disability suffered by the petitioner. In the absence of any cogent evidence with regard to the disability suffered by the petitioner, the finding of the Tribunal that the disability of 35% as certified by P.W.2 is unsustainable, needs no interference. Therefore, awarding of Rs.42,800/- as compensation is just and reasonable and the same needs no interference. In view of the above, the appeal is devoid of merits and the same is liable to be dismissed.

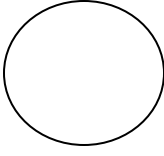
13. Accordingly, the appeal is dismissed. There shall be no order as to costs.

Consequently, miscellaneous petitions if any pending in the appeal shall stand dismissed.

14<sup>th</sup> October, 2016  
cbs

ANIS, J.





**THE HON'BLE SMT JUSTICE ANIS**



C.M.A.No.4383 of 2004

14<sup>th</sup> October, 2016

cbs