

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.235 of 2010

JUDGMENT:

The injured claimant, having maintained claim under Section 166 of the Motor Vehicles Act (for short 'the Act'), for a compensation of Rs.1,00,000/-, for the injuries sustained by him in the motor accident on 05.09.2005, from the contest by the respondents, A.P.State Road Transport Corporation (for short 'APSRTC'), who hired the bus from the 2nd respondent-owner insured with the 3rd respondent, since awarded of Rs.16,500/- with interest at 7.5% p.a., by fixing 50% composite negligence on the part of the injured vide award in M.V.O.P.No.1693 of 2005 dated 17.08.2007, maintained the present appeal, impugning on the quantum of contributory negligence arrived and also on the quantum of compensation.

2. The contentions in the grounds of appeal vis-à-vis oral submissions of the learned counsel for the appellant that the tribunal gravely erred in fixing contribution on the part of the injured, though it is the bus driver's sheer negligence that caused the accident and ran over his foot and sustained two injuries including one metatarsal apart from first wound lateral condyle of humerus, fixing of contributory or composite negligence on the part of the injured is unsustainable and the compensation awarded is utterly low and unjust and it requires to be enhanced as prayed for.

3. Whereas, it is the submission of the learned Standing Counsel for the APSRTC that the award of the tribunal holds good and for this Court while sitting in appeal, there is nothing to interfere.

4. Heard and perused the material on record.

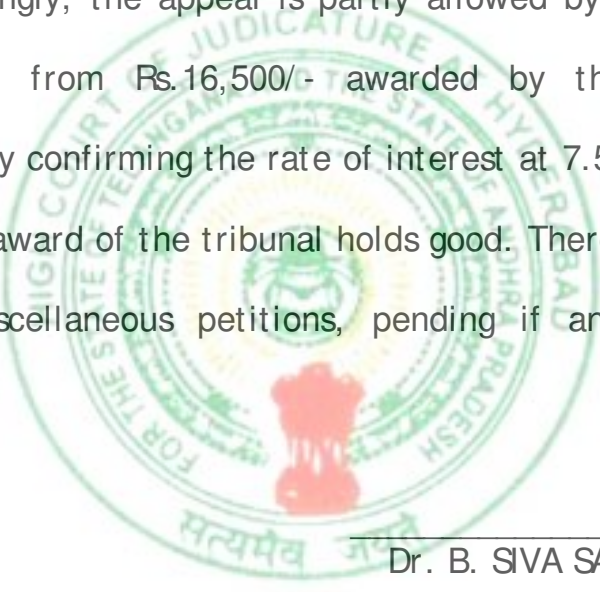
5. Undisputedly, from the evidence of PW.1 that when the bus reached the platform, the accident occurred. The question of boarding a bus arises after the bus reached the platform. The evidence of PW.1 including his cross examination clearly shows that he was in the anxiety to go early to the college within time and the tribunal there-from observed rightly not only from the oral evidence but also from the attending circumstances that the injured when getting down in the platform before the bus reaching to platform, the tyre of the bus was ran over on his foot does not arise. If at all once such is the case, the 50% composite negligence on the part of the injured arrived by the tribunal, as there is no finder of the last opportunity on the bus driver also, no way requires interference, for this Court while sitting in appeal.

6. Coming to the quantum of compensation, the first injury is right lateral condyle of humerus , what Rs.15,000/- awarded by the tribunal is utterly low to enhance to Rs.20,000/- , second injury is fracture of right 5th metatarsal, what the tribunal awarded of Rs.10,000/- is upheld and so far as medical expenses and treatment even it shows treatment in private hospital for the two fractures supra, what the tribunal awarded of Rs.5,100/- only from the bill requires enhancement to Rs.10,000/- inclusive of bills and Rs.3,000/- towards transport charges, extra nourishment no way

requires interference and loss of earnings not taken into consideration requires to grant at least of Rs.5,000/-, then it comes to Rs.48,000/- and 50%therein comes to Rs.24,000/-.

7. Now coming to the exoneration of the APSRTC, the law is fairly settled from the expression of the Apex Court in Managing Director, Karnataka State Road Transport Corporation v. New India Assurance Co. Ltd.¹, that there is a joint liability to the APSRTC also. Hence, all the respondents are jointly and severally liable to pay the said compensation.

8. Accordingly, the appeal is partly allowed by enhancing the compensation from Rs.16,500/- awarded by the tribunal to Rs.24,000/- by confirming the rate of interest at 7.5%p.a. In other aspects, the award of the tribunal holds good. There is no order as to costs. Miscellaneous petitions, pending if any, shall stand closed.



Dr. B. SIVA SANKARA RAO, J

Date:25.10.2016
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¹ 2015 ACJ 2849