

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A Nos.107 and 407 OF 2010

COMMON JUDGMENT:

The injured claimant maintained O.P. No.2196 of 2007 on the file of V Additional Metropolitan Sessions Judge (Mahila Court) – cum-XIX Additional Chief Judge, City Criminal Court, Hyderabad (for short ‘the Tribunal’) against APSRTC for a compensation of Rs.3,00,000/- originally, later amended to Rs.6,00,000/- by virtue of the order passed in I.A. No.955 of 2009 dated 23.03.2009, under Section 166 of Motor Vehicles Act, 1988 (for short ‘the Act’) for the injuries sustained by him in the motor accident dated 08.10.2007. From the contest by APSRTC, the Tribunal having held that the accident was the result of rash and negligent driving of driver of bus bearing No.AP 11 Z 4842, awarded compensation of Rs.1,81,500/- with interest at 7% per annum vide award dated 07.04.2009, after scanning the evidence of PWs.1 to 4 and Exs.A1 to A15, for no documents or evidence adduced on behalf of the RTC. Impugning the said award, the injured claimant filed appeal i.e., M.A.C.M.A. No.107 of 2010 stating that the compensation awarded is utterly low and the Tribunal ought to have awarded as prayed for and the APSRTC maintained M.A.C.M.A. No.407 of 2010 impugning the award of the quantum as exorbitant and excessive and the accident was not outcome of the negligence of the driver of the bus but for of the own negligence of the injured and *Res ipsa loquitur* also applies and the Tribunal not properly considered, thereby the RTC cannot be made liable but for the claim if any against the Insurance Company of the motor cycle bearing No.AP 29 N 7996 of the injured petitioner, hence to set aside the award and totally exonerate the RTC.

- 2) Heard both sides at length. Perused the material on record.

3) From the petition averments and evidence of the injured claimant as PW.1, there is no other eye witness regarding the manner of accident but for placing the reliance on Exs.A1 and A2—FIR and charge sheet respectively to say that while he was proceeding on his motor cycle along with his brother, from Vemulanarva Village to Hyderabad, when he reached near Shamshabad bus stand, one APSRTC bus bearing No.AP 11 Z 4842 came in a rash and negligent manner and dashed, thereby he sustained fracture injuries.

4) The evidence of the injured claimant as PW.1 in chief examination is the same averments supra from which he sustained the injuries referred in para No.3 of the chief affidavit. The other evidence is regarding the claim from the nature of injuries, treatment and disability etc.,

5) Para Nos.7 & 9 of the chief affidavit also reiterates that his brother-in-law, Sudheer Kumar Reddy, gave the complaint to the police registering crime No.350 of 2007, which is covered by Ex.A1—FIR against the bus driver and in para No.9 saying the accident was due to rash and negligent driving of the bus driver.

6) Coming to Ex.A1-FIR, neither the report by him nor even by his brother as pillion rider of the bike of the accident dated 08.10.2007 at about 14.30 pm hours, reported by 16.30 hours, reads that the petitioner along with his brother proceeding on a motor cycle bearing No.AP 29 N 7996 towards Hyderabad and when they reached near Shamshabad Bus stand, one RTC bus bearing No.AP 11 Z 4842 was coming from Shamshabad bus stand in a rash and negligent manner and in a wrong route dashed the bike, as a result, the petitioner sustained injury to right knee exposing by fracture of lower portion of thigh and his brother also sustained a right leg at thigh region and the

persons there joined him in Akshitha Hospital, Shamshabad and he came to know of the same. The report speaks that he is not an eye witness and no eye witness is examined. Importantly the bus was coming only from the Shamshabad Bus depot immediately and accident took place opposite to the bus depot.

7) PW.1's evidence would show that the bus came in a rash and negligent manner. Whereas Ex.A1—FIR shows as if it is a wrong side. It is highly unbelievable that bus coming from depot wrong side, thereby as contended by RTC, it cannot be believed that there is negligence of the driver of the bus which is coming from the bus depot and dashed the injured claimant but for his contribution from the composite negligence of him. The Tribunal did not properly appreciate these facts, from the evidence supra with reference to Ex.A1, leave about no eye witness was examined. Thus, it can be said that the injured claimant also contributed to the accident of his composite negligence and it all depends upon several factors including size of the vehicle, who were in wrong side, if at all reflects from scene observation report, which is admittedly not filed in this case and size of the vehicles, width of the road, condition of the road where accident took place, these facts also not explained, leave about, the RTC also has not chosen to examine the driver of the bus.

8) So far as the liability is concerned, taking into consideration of these factors, this Court is bound to interfere in coming to just conclusion to say there is 20% contribution of the injured for the accident and the APSRTC is liable for 80%. To that extent, the finding of the Tribunal of 100% liability on the APSRTC is modified to 80%.

9) Coming to the entitlement of the compensation from the nature of injuries, disability and period of treatment and earnings out of

the claim concerned, as per the evidence of PW.1 with reference to Ex.A3—wound certificate issued by Akshitha Hospital, Shamshabad, itself is clear of the admission that the claimant sustained injuries at about 14.30 pm on 08.10.2007 while traveling on a two wheeler hit by RTC bus and sustained injuries, from the medical examination by the Doctor of commuted grade III compound fracture, right distal femur with loss of bone, lateral tibia plateau fracture, fracture shaft right distal tibia shaft, described as grievous in the certificate, which was issued on 22.10.2007 about 15 days after the accident and admission.

10) Ex.A7 is the physical disability certificate issued by PW.2, who is the self same person again examined, for the best reasons known to lower Court and for claimant, as if PW4, instead of invoking Order 8 Rule 17 C.P.C to recall and further examination, on 22.11.2008 showing commuted grade III compound fracture, right distal femur with loss of bone, lateral tibia plateau fracture, fracture shaft right distal tibia shaft. Thus, it shows instead of two fractures there are three fractures and the disability estimated, which is nearly more than one year after the accident, at 30% permanent disability and the reasons while assessing 30% disability stated that walking with stick, difficulty in raising shoe, pain while working and sitting, pain in knee and walks slowly with limb. In fact PW.1 present before this Court and the same position is continuing as observed regarding disability covered under Ex.A7.

11) Though the learned counsel made an attempt to show the disability something more, this Court could not consider more than 30% disability assessed by the Doctor. Exs.A4 to A6 are the discharge summaries after the accident dated 08.10.2007 of which Ex.A4 is discharge summary showing admission on self same date on

01.10.2007, operation conducted on 09.10.2007 and discharged on 22.10.2007 and it shows commuted grade III compound fracture, right distal femur with loss of bone, lateral tibia plateau fracture, fracture shaft right distal tibia shaft and the operation procedure say Orif of right distal femur right tibia shaft and percutaneous screw fixation of tibia plateau fracture.

12) It is important to mention from the further argument advanced by the learned counsel for the appellant with reference to PW.2 speaks further evidence in citing as if PW.4 of he issued the estimation in March, 2009 after his earlier deposition as PW.2 about three months later though either the record given by him, discharge summaries among Exs.A4 and A6 or the disability certificate issued by him no way discloses any operation required for knee cap replacement and even Exs.A4 and A7 show the screw fixation of the right tibia plateau done and it requires operation much less to any credence to the subsequent introduction of the estimation of the replacement of knee cap to consider the same but for at best to observe herein in the event of such record and there is no requirement of knee cap replacement on saying the same further claim if at all his left bone and nothing here to consider from the above as discussed supra for no credence be given to Ex.A8 estimation, the injuries sustained show three fractures with permanent disability of 30% that requires to be taken into consideration. The Tribunal did not appreciate the evidence on record properly in awarding lumpsum compensation, that too, when it has not effected any functional disability and even no avocation proved. Thus, it requires to consider from his age by adopting multiplier method and taking 30% permanent disability. In this regard there is no need of discussion of Exs.A11 and 12 O.P card and medical prescriptions

respectively, leave about medical bills covered by Exs.A10 and 13 and certificate estimation Ex.A15, later the only document that placed reliance on Ex.A9 consist of three Form No.2D saral. At the cost of repetition, the accident occurred on 08.10.2007, the form 2D saral for the year 2005-06 showing the date of filing as 23.01.2006 from a stamp of additional CIT renewal, Hyderabad. In fact there is neither acknowledgement nor signature even to give a credence and for a scrap of paper to ask to rely merely because there is nothing to show any proof regarding he is running kirana shop much less by filing RC or he is getting therefrom Rs.98,650/-, Thus no credence be given to it even a little scrap of paper much less to call the same as Saral duly submitted and acknowledged, that too, when he is really doing kirana business nothing prevented him to file other documents and about income tax PAN card. As per Ex.A9 alleging the only oral evidence on record placed in the claim petition is that he was doing kirana business and 34 years old by the date of accident. Definitely he cannot be considered as no avocation. In the factual scenario that the claimant doing kirana business even without running any small business and never filed income tax assessment, Even then it is just to arrive the monthly earnings of him as on the date of accident at Rs.5,500/- per month, the multiplier applicable is '16' from the age of injured, the loss of dependency comes to Rs.10,56,000/- (Rs.5,500/- X 12 X 16). Apart from it, Rs.1,12,000/- towards medical expenses, Rs.11,000/- towards loss of earnings for two months, Rs.3,000/- towards transport charges, Rs.5,000/- towards attendant charges and even taken Rs.50,000/- towards pain and sufferance, it comes to Rs.12,37,000/-. Out of it, 80% of liability comes to Rs.9,89,600/- rounded to 9,90,000/- to which the claimants are entitled to.

13) Accordingly and in the result,

i) M.A.C.M.A. No.107 of 2010 is allowed by enhancing the compensation from Rs.1,81,500/- (Rupees one lakh eighty one thousand five hundred only) to Rs.9,90,000/- (Rupees nine lakhs ninety thousand only) subject to payment of deficit court fee for Rs.3,30,000/- under Rule 475 of A.P. M.V Rules, failing which the claimant is not entitled to execute the award and also not entitled to interest on the enhanced amount but from today till realization. The RTC shall deposit said amount within one month from the date of the receipt of the order, failing which the claimant can execute and recover.

ii) M.A.C.M.A. No.407 of 2010 is dismissed.

iii) No order as to costs in both the appeals.

Consequently, Miscellaneous petitions, if any pending in these appeals shall stand closed.

Dt.20.10.2016
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Dr. B. SIVA SANKARA RAO, J

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A Nos.107 and 407 OF 2010



Date:20.10.2016

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