

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

M.A.C.M.A. No.462 of 2009

JUDGMENT:

Aggrieved by the Award dt: 01.05.2003 in O.P.No.761 of 1998 passed by the Chairman, M.A.C.T-cum-II Additional District Judge, West Godavari District, Eluru (for short 'the Tribunal'), the claimant preferred the instant appeal.

2) The factual matrix of the case is thus:

a) On 12.01.1998 at about 3:30pm, the claimant was proceeding on his scooter bearing No.AP 37 D 9693 slowly and carefully to attend his duty and when he reached near Railway Station road, one APSRTC bus bearing No.AP 9 Z 6916 being driven by its driver i.e, 1st respondent in a rash and negligent manner and at high speed, dashed the claimant. In the resultant accident, the claimant sustained grievous injuries and was shifted to Government Hospital, Tanuku for treatment and he was discharged on 12.01.1998 and joined as inpatient in Dr.Nimmagadda Atchyutaramaiah's (M.S.Ortho) Hospital, Tanuku, where operation was done to his left leg femur bone lower 1/3rd and steel rod was inserted and was also treated for his left collar bone. It is averred that the accident was occurred due to rash and negligent driving by the driver of the APSRTC bus. On these pleas, the claimant filed O.P.No.761 of 1998 under Section 166 and 163-A of Motor Vehicles Act,

1988 (for short “the Act”) against respondents 1 and 2, who are the driver and the General Manager of the APSRTC respectively and claimed Rs.1,35,000/- as compensation.

- b) The 1st respondent remained *exparte*.
- c) The 2nd respondent/APSRTC filed written statement denying the material averments and urged to put the claimants in strict proof of the same. R.2 contended that there is no negligence on the part of 1st respondent and the accident was occurred due to the negligence of the claimant himself. Thus R.2 prayed to dismiss the OP.
- d) During trial, PW.1 was examined and Exs.A1 to A28 were marked on behalf of claimant. RW1 was examined and no documents were marked on behalf of respondents.
- e) The lower Tribunal on appreciation of both oral and documentary evidence awarded total compensation of Rs.73,000/- with proportionate costs and future interest @ 12% p.a. against respondents under different heads as below:

Loss of pay	Rs. 12,000-00
Transportation	Rs. 1,000-00
Extra nourishment	Rs. 5,000-00
Medical expenditure	Rs. 15,000-00
Pain and suffering, mental agony	Rs. 15,000-00
Continuing and permanent disability	Rs. 25,000-00

Total:	Rs. 73,000-00

Hence, the appeal by claimant.

3) The parties in the appeal are referred as they were stood before the lower Tribunal.

4) Heard arguments of Sri Naram Nageswara Rao, learned counsel for appellant/claimant and Sri S.V.Ramana, learned Standing Counsel for APSRTC/ 2nd respondent. Case against R.1/driver was dismissed for default vide Court Order dt:15.12.2008. Since R.1 remained *ex parte* and suffered decree before the lower Tribunal, his absence in this appeal is not a consequence in view of decision reported in ***Meka Chakra Rao vs. Yelubandi Babu Rao @ Reddemma and others***^[1].

5 a) Challenging the compensation awarded as low, learned counsel for appellant argued that the Tribunal awarded very low amount of Rs.15,000/- towards medical expenditure though in fact the claimant spent about more than Rs.30,000/- in two spells for his treatment for medicines and operations. He submitted that the compensation under the head medical expenditure needs to be suitably revised. He further submitted that the Tribunal awarded low amount of Rs.15,000/- towards pain and suffering inspite of the fact that the claimant suffered two fractures i.e, fracture of the collar bone and left thigh bone and experienced excruciating pain and suffering. He prayed to enhance the compensation in that regard also.

a) Finally he argued that the Tribunal did not grant any

compensation for disability suffered by the claimant and therefore, suitable compensation may be awarded for his disability and consequential loss of earning power.

6) Per contra, while supporting the award learned Standing Counsel for APSRTC/2nd respondent contended that the on own admission of the claimant that he took treatment in two spells: first time for treatment for the fracture injuries sustained by him in the accident and on the second occasion for the bend occurred in his left leg due to his falling down from the cycle while he was doing physiotherapy. Learned counsel argued that the second time treatment has no connection with the accident and therefore, the Tribunal rightly granted compensation for medical expenditure for the first time treatment alone and hence the claimant cannot claim any enhancement of compensation for medical expenditure.

a) Nextly he argued that the claimant did not produce any evidence to establish that he suffered any disability resulting in the loss of earning power and therefore, the Tribunal rightly rejected his claim in that regard. He thus prayed to dismiss the appeal.

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

“Whether the award passed by the Tribunal is factually and legally sustainable?”

8) **POINT:** The accident, involvement of APSRTC bus

bearing No.AP 9 Z 6916 and scooter bearing No.AP 37 D 9693 and claimant suffering injuries are all admitted facts. The dispute is only with regard to the quantum of compensation.

9) The first argument of the claimant is that the Tribunal awarded very low amount of Rs.15,000/- towards medical expenditure though he spent about Rs.30,000/- for medicines and operations. In this regard a perusal of the award shows that the Tribunal observed that after discharge from the Hospital, the claimant again sustained injury by falling from the cycle and hence the second time treatment and operation underwent by him was not on account of the accident but because of his fault and therefore, he does not deserve compensation for medical expenditure incurred by him in the second time. So from out of the total medical expenditure of Rs.30,000/- claimed by the claimant, the Tribunal awarded only Rs.15,000/-. I am unable to accept this observation. It is true that after discharge, while as a part of physiotherapy the claimant was doing the cycling exercise, he slipped and fell down and thereby the steel rod fixed in his left thigh became bent and hence he had to join the hospital of Dr.Nimmagadda Atchyutaramaiah, with whom he took treatment earlier and again operation was conducted and a part of his bone was removed and gap was filled up. So as can be seen, the second time treatment was necessitated when the claimant fell off the cycle while he was doing Physiotherapy as advised by the Doctor. Logically speaking, the physiotherapy was

necessitated due to his suffering injuries in the accident. Therefore, the second time treatment cannot be said to be totally unconnected to the accident. Hence he deserves compensation for the second time treatment also. Even otherwise, the record shows that the claimant suffered fracture to his left clavicle bone and also left thigh for which he underwent treatment in a private hospital. Going by the fact that he suffered two fractures and took treatment in a private hospital, medical expenditure of Rs.30,000/- cannot be said to be a high claim. Therefore in my view he deserves compensation of **Rs.30,000/-** as claimed for medical expenditure and hence the said amount is awarded.

10) The second contention is that the Tribunal awarded low amount of Rs.15,000/- towards pain and suffering. The award shows that though the claimant claimed Rs.20,000/- for pain and suffering, the Tribunal awarded only Rs.15,000/- on the premise that the pain and suffering underwent by him on the second time was due to his own fault as he fell down from the cycle and therefore, the said pain and suffering has no connection with the accident. This observation also cannot be accepted. As observed supra, the claimant fell down from the cycle while doing exercise on a cycle as a part of physiotherapy prescribed by the Doctor and therefore, the subsequent pain and suffering cannot be said to be unconnected to the accident. Hence the claimant deserves compensation of **Rs.20,000/-** for pain and suffering.

11) The next argument is that the Tribunal did not award compensation for disability. This argument does not hold water because as rightly observed by the Tribunal, the claimant has not produced any evidence to establish that he suffered disability which effected his earning capacity. Per contra, even after accident he has been working as Excise Head Constable and getting the salary as usual. Hence this argument was rightly rejected by the Tribunal.

Thus the total compensation payable to the claimant is detailed as below:

Loss of pay	Rs. 12,000-00
Transportation	Rs. 1,000-00
Extra nourishment	Rs. 5,000-00
Medical expenditure	Rs. 30,000-00
Pain and suffering, mental agony	Rs. 20,000-00
Continuing and permanent disability	Rs. 25,000-00

Total:	Rs. 93,000-00

Thus the compensation is enhanced by Rs.20,000/- (Rs.93,000/- minus Rs.73,000/-).

12) In the result, this M.A.C.M.A is partly allowed and ordered as follows:

- a) The compensation is enhanced by **Rs.20,000/-** with proportionate costs. The enhanced compensation amount shall carry interest at the rate of 7.5% p.a from the date of O.P till the date of realization.
- b) Respondent Nos.1 and 2 are directed to deposit the

compensation amount within two (2) months from the date of this judgment, failing which execution can be taken out against them.

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

U. DURGA PRASAD RAO, J

Date: 31.03.2016
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[\[1\]](#) 2001 (1) ALT 485