

HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

M.A.C.M.A.No.314 OF 2010

JUDGMENT:

The respondent-APSRTC of the O.P.No.271 of 2005 filed under Section 166 of the Motor Vehicle Act,1988 (*for short, 'the Act'*) on the file of the learned Chairman of the Motor Accidents Claims Tribunal–cum-Prl. District Judge, Nellore (*for short, 'Tribunal'*), by the claimant for the injuries sustained by him in the motor accident caused by rash and negligent driving of the driver of the RTC bus bearing No.AP 11 Z 788 which came in opposite direction to him in extreme right margin trying to overtake another RTC bus while the claimant was proceeding on his scooter on 27.12.2004 at about 9.00 a.m. near Marupuru, for a claim of Rs.8,00,000/-; from the contest, the tribunal by its award dated 14.12.2009 granted compensation of Rs.4,11,000/- with interest at 7.5%p.a. impugning said award, preferred the appeal with the contentions in the grounds of appeal that the quantum awarded by the tribunal is excessive and exorbitant, that the tribunal failed to see that there is no negligence on the part of the bus driver as on seeing the claimant coming on his scooter in opposite direction in rash and negligent manner, he slowed down the bus and took it to the left side, in spite of that the claimant lost control and hit the bus and on hearing the sound from the back side, the driver stopped the bus and found that the claimant fell down on the road, thus in that process, the claimant received injuries, that the tribunal ought to have apportioned the liability at least at 50% each in view of its finding that there was composite negligence, that the tribunal ought to have dismissed the claim petition for non-joinder of necessary parties of owner and insurer of the scooter of the claimant, that the tribunal erred in awarding compensation towards loss of earnings, medical expenses, pain and

sufferance and transport charges etc., without proof, hence to set aside the award of the tribunal by allowing the appeal. The learned counsel for the APSRTC/ appellant reiterated the same during course of hearing. Whereas, the learned counsel for the claimant supported the award of the tribunal and prayed for dismissal of the appeal.

2. Heard both sides and perused the material on record.

3. Coming to the manner of accident the injured claimant deposed as P.W.1 with reference to Ex.A.1 F.I.R. registered against the R.W.1 bus driver. According to his evidence and claim petition averments while he was proceeding to Nellore on scooter near Marupuru on the road, the bus driver coming in opposite direction while overtaking another R.T.C. bus, dashed his scooter resulting he sustained multiple fractures. As pointed out by the tribunal, there is no worth cross-examination of P.W.1 in this regard. No doubt, R.W.1-driver of the bus deposed saying departmental enquiry conducted against him but he did not file any finding in the departmental enquiry of exoneration of him. In support of its counter the manner of the accident is that the driver, on seeing the claimant, stopped the bus by slowing down and swerved to the left side of the road margin and despite the claimant lost control over the scooter and hit the right side rear portion of the bus and on hearing big sound from back of the bus, the driver stopped the bus and found the claimant fell down and shifted him to Government hospital, Nellore in an auto. While coming in opposite direction undisputedly when the accident occurred and no M.V.I. report of the examination of the bus filed even to say whether the damage to the bus caused so also to the scooter tested for examination if any, there is no credence that can be given to R.W.1's oral evidence for no any giving of police report apart from admittedly no crime registered on his alleged giving of report instead the crime

registered is against him from the claimant's statement. Thus, so far as that finding of the tribunal concerned of the accident by the result of the rash and negligent driving of the R.W.1 bus driver, there is nothing to interfere.

4.R.W.1 also stated about the claimant sustaining injuries in the accident. From the above, the Ex.A.13 final medical bill for Rs.1,20,929.38ps and after deduction of costs of drugs returned, total costs to Rs.1,32,614.18ps which can be taken into consideration but by adding something to it by the tribunal and making Rs.2,65,592.94ps as medical bills is untenable. Thereby it requires to be reduced to Rs.1,32,614.18ps only. As what P.W.2 deposed and proved for the Exs.A.13 to A.15 supported by the Ex.A.4 prescriptions, A.5 to A.7,A.10 and A.11 can also be included in the final bill itself for nothing more to grant. So far as pain and sufferance from the multiple injuries including for partial disability what the tribunal awarded no way requires to reduce for to enhance Rs.20,000/- more. Therefrom total compensation for which the claimant entitled comes to Rs.3,00,000/-.

5.Having regard to the above, the appeal is allowed in part by reducing the compensation awarded by the tribunal of Rs.4,11,000/- to Rs.3,00,000/-. In other respects, the award of the tribunal holds good. There is no order as to costs in the appeal. Consequently, pending miscellaneous petitions, if any, in this appeal, shall stand closed.

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Dr. B. SIVA SANKARA RAO, J

Date:26.12.2016

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