

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.1385 OF 2011

JUDGMENT:

Assailing the award, dated 31.12.2010, in O.P. No.178 of 2006, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - I Additional Chief Judge, City Civil Court, Secunderabad, awarding a total amount of Rs.5,35,000/- as compensation for the injuries sustained by the petitioner, the Andhra Pradesh State Road Transport Corporation preferred the instant Civil Miscellaneous Appeal, on the ground that the amount of Rs.30,000/- granted towards pain and suffering, Rs.3,50,000/- towards medical expenses, Rs.30,000/- towards injuries and Rs.1,25,000/- towards loss of income are excessive.

2. The appellant herein viz., Andhra Pradesh State Road Transport Corporation, represented by its Managing Director, Hyderabad (for short 'APSRTC'), which is owner of the Bus bearing No.AP-9-Z-7003 that involved in the accident, is respondent No.1 in the O.P. before the Tribunal, while respondent No.1 is petitioner - claimant and respondent No.2, who is driver of the bus, is respondent No.2.

3. For the sake of convenience, the parties are hereinafter referred to as arrayed in the O.P. before the Tribunal.

4. The brief facts are that on 20.02.1998 at about 9.45 a.m., while the petitioner, who was aged 41 years old, employed as General Manager for Information Management Division by M/s. Gulf Info-Tech (India) Private Limited, an information technology company, was proceeding to his work place from his residence in his Maruti Car bearing No.AP-9-R-3572 and when he was driving it at Tankbund Road, APSRTC bus bearing No.AP-9-Z-7003 driven in a rash and negligent manner came in opposite direction and hit front right side portion of his car, due to which, he sustained head injury, injury to his right hip and right leg and his car was badly damaged. The driver of the bus was also arrayed as respondent No.2. The petitioner was immediately taken to Medciti Hospital, Hyderabad, where he was treated as inpatient from 20.02.1998 to 25.2.1998 and thereafter, in Udai Clinic from 25.02.1998 to 10.03.1998 and he was bed ridden till 30.06.1998. He underwent surgical interventions. According to him, the diagnosis shows grievous injury to hip joint, signs of a vascular necrosis in right femoral head which requires additional surgery in the form of total hip replacement. Claiming that he incurred huge amount towards medical expenses and he lost both physical and mental health besides all pleasures in life and forced to appoint a driver and paying him a salary of Rs.1,800/- per month, sought a sum of Rs.58,68,836/-.

5. Separate counters were filed by respondent Nos.1 and 2, owner and driver, respectively, of the bus that involved in the accident.

6. It is stated in the counters that after lapse of about 8 years, the claim was made in 2006, though, the accident took place in the year 1998 and the claim is highly excessive. Respondent No.2, driver of the bus, was also acquitted in the criminal case, and that the petitioner himself contributed to the accident, and, thereby, sought to dismiss the claim petition with costs.

7. The Tribunal, based on the pleadings, framed three (3) issues in order to determine compensation as well as negligence in taking place of the accident.

8. During enquiry, on behalf of the petitioner, he himself was examined as PW.1 and the doctor who treated him was examined as PW.2 besides marking Exs.A-1 to A-16. On behalf of the respondents, respondent No.2, driver of the bus that involved in the accident, examined himself as RW.1 and filed Ex.B-1, certified copy of the judgment in the calendar case (C.C. No.1427 of 1998).

9. On issue No.1, the Tribunal, on appraisal of evidence of PW.1 supported by documentary evidence under Exs.A-13 to A-16 and discarding the evidence of RW.1 and Ex.B-1 observing that acquittal of RW.1, driver, was mainly on the ground that there were varied versions and since respondent No.2 himself is driver, which is not disputed, recorded a finding in favour of the petitioner.

10. On issue No.2, the Tribunal, having extracted the injuries noted by PW.2, as described in paragraph No.8(a), elaborately discussed the evidence of PW.2 in the light of documentary evidence under Ex.A-9 discharge summary, clinical findings, diagnosis noted in Exs.A-5 and A-6 and the suggestions made by PW.2 to go for hip replacement, granted Rs.30,000/- towards shock, pain and suffering and also loss of amenities in life.

11. Further, though, the disability was assessed at 70% by PW.2 and Ex.A-3 disability certificate was obtained by PW.1 from Yashoda Hospital, the Tribunal, on the ground that disability certificate was not obtained from the competent Medical Board, holding that the person who issued the certificate was not competent to issue the same, discarded Ex.A-3 and having considered Ex.A-8 for Rs.19,913/- and Ex.A-4 certificate/letter where PW.2 mentioned that the petitioner has to incur nearly Rs.3,25,000/- for total hip replacement surgery, and keeping in view, the advice of PW.2 mentioned in Ex.A-11, granted an amount of Rs.3,50,000/- towards transport charges, extra-nourishment and medical expenses

12. The Tribunal assessed the loss of income at Rs.1,25,000/- for a period of 131 days between 20.02.1998 and 30.06.1998 believing the evidence of PW.1 that he was earning Rs.25,460/- per month as General Manager in an Information and Technology Company, and, thus granted a total sum of Rs.5,35,000/- towards compensation permitting him to withdraw Rs.2,00,000/- initially.

13. The aforesaid order is under challenge by the APSRTC in the instant appeal mainly contending that the amounts of Rs.3,50,000/- and Rs.1,25,000/- granted towards medical expenses and loss of income, respectively, is without any basis.

14. Heard Sri N. Vasudeva Reddy, learned counsel for the APSRTC (appellant), and Sri K. Rajendran, learned counsel for respondent No.1 - petitioner.

15. Since it is mentioned in the cause title of the appeal by the APSRTC itself, that respondent No.2, who is driver of the bus that involved in the accident, is only a formal party and no notice is required, his absence is of any consequence.

16. Learned counsel for the APSRTC would submit that the Tribunal, in anticipation, granted Rs.3,25,000/- and, in fact, there has been negligence on the part of the petitioner himself or at least there was his contribution to the accident and the said facts were not properly examined by the Tribunal despite examining driver of the bus, respondent No.2, who was acquitted in the calendar case. His further submission is that Rs.1,25,000/- granted towards loss of income is also without there being any documentary proof and any authorized person being examined in that regard.

17. Perused the order and decree under challenge and the material on record.

18(a). The amount of Rs.30,000/- granted by the Tribunal towards shock, pain and suffering and loss of amenities in life, when kept in view, the injuries sustained by the petitioner, being right posterior dislocation of hip with fracture of acetabulum and the second, laceration over scapula and forehead which was sutured at Mediciti Hospital, certainly, it cannot be said as arbitrary.

(b) Likewise, even Rs.30,000/- granted for right hip injury which was comminuted fracture of acetabulum with dislocation of right hip joint cannot be viewed as excessive. Even the amount of Rs.1,25,000/- granted by the Tribunal towards loss of temporary earnings for a period of 131 days cannot be said that the same was granted without any basis as the Tribunal, based on the evidence of PW.1 that he was drawing a salary of Rs.25,460/- and had to leave the job on account of accident. In that view of the matter, certainly, that finding recorded by the Tribunal and the amount granted by it cannot be faulted.

(c) Further, out of the amount of Rs.3,50,000/- granted by the Tribunal towards medical expenses, the amount of Rs.19,913/- is justified as described from Ex.A-8 hospital bill.

(d) Turning to the balance amount, the Tribunal, based on the evidence of PW.2 and Ex.A-4 certificate, as PW.2 has asserted that PW.1 requires Rs.3,25,000/- for total replacement of hip surgery and, in fact, he has issued Ex.A-4 certificate also to that effect. The first

injury would show that right posterior dislocation of hip with fracture of acetabulum, and so far as fracture is concerned, it appears to have been corrected by surgical interventions. However, the hip joint and replacement of right hip treated by the date of examination of PW.2, since it was huge amount during the year 1998 when the petitioner sustained injury, perhaps, the petitioner must not have adequate financial capacity to undergo surgery.

(d) It is also brought to the notice of this Court that even a petition under Rule 475(2) of A.P. Motor Vehicles Rules, 1989 was filed by the petitioner and the same was dismissed by the Tribunal and this Court also confirmed the same, and that due to lack of financial assistance, he could not approach the Tribunal on account of the fact that he was immobilized because of hip dislocation.

(f) Learned counsel for the petitioner would submit that the petition under Rule 475(2) of A.P. Motor Vehicle Rules, 1989, was filed in 1998 itself seeking exemption of Court fee and it was kept pending and that that was the reason, the claim petition came to be numbered in 2008.

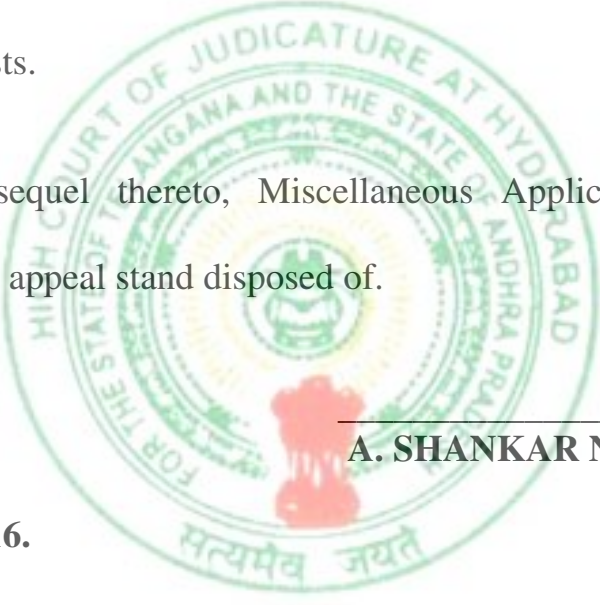
(g) Be that as it may, there is every justification in granting Rs.3,25,000/- besides the medical bill amount shown under Ex.A-8 and other amounts i.e., transport charges and extra-nourishment as could be seen from the evidence of PW.2.

19. Even the rate of interest granted by the Tribunal at 7.5% per annum is justifiable since the same is in accordance with the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**¹.

20. Thus, viewed from any angle, there is no merit in the instant appeal.

21. Therefore, the Civil Miscellaneous Appeal is dismissed confirming the order and decree under challenge. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal stand disposed of.



A. SHANKAR NARAYANA, J

August 5, 2016.

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¹2013 ACJ 1403 = 2013(4)ALT35