

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1614 of 2005

JUDGMENT :

Aggrieved by the order and decree dated 02.04.2004 in O.P.No.807 of 2001 passed by the Chairman, Motor Accidents Claims Tribunal-cum-Additional District Judge, Vizianagaram District (for brevity "the Tribunal"), whereby and whereunder a sum of Rs.1,02,000/- was awarded towards compensation with interest at 9% per annum from the date of petition till the date of realisation, as against the claim of Rs.2,50,000/- made under Section 166 of the Motor Vehicles Act, 1988, for the injuries sustained by the respondent/petitioner, the appellants/A.P. State Road Transport Corporation have filed the present Civil Miscellaneous Appeal.

2. The appellants herein are respondent Nos.2 and 3, respondent No.1 is the petitioner, and respondent No.2-driver of the offending Bus is respondent No.1 in O.P.No.807 of 2001.

3. For the sake of convenience, in this appeal, the parties are referred to as they are arrayed in O.P.No.807 of 2001 before the Tribunal.

4. The facts, in brief, are that on 14.11.1999 at about 2.30 p.m., while the petitioner and one G. Venkatarao were going on a scooter bearing No.ADN 9987 driven by the petitioner, an RTC Bus bearing No.AP 10Z 2408 belonging to the respondents-Corporation driven by the 1st respondent-driver in a rash and negligent manner at high speed, came in opposite direction and dashed against the scooter of the petitioner near Tamarapalli Road

Junction, due to which the petitioner sustained injuries, that the petitioner was immediately shifted to Hospital for treatment and, therefore, he filed O.P.No.807 of 2001 claiming compensation of Rs.2,50,000/- for the injuries sustained by him in the said accident.

5. Before the Tribunal, the 1st respondent – driver of the offending Bus remained exparte, and the 3rd respondent – Managing Director, APSRTC, Hyderabad, filed counter, which was adopted by the 2nd respondent-Depot Manager, S.Kota, opposing the claim and disowning negligence on the part of the driver of the offending Bus and also contending that the claim was excessive and hence sought to dismiss the claim. Basing on the pleadings, the Tribunal framed the following three issues for fixing liability and determining the amount of compensation:-

“(1) Whether the accident occurred due to the rash and negligent driving of the RTC Bus bearing No.AP 10Z 2408 by R.1?

(2) Whether the petitioner is entitled for any compensation from any of the respondents, if so, from which of the respondents?

(3) To what relief?”

6. During the course of enquiry, the petitioner himself was examined as P.W.1, besides examining one Dr. K.V. Murali Mohan, to prove the disability, and got marked Exs.A-1 to A-5, besides marking Exs.X.1 and X.2, which are Case Sheet maintained by the Headquarters Hospital, Vizianagaram, and X-Ray, respectively. On behalf of the respondents, the driver of the offending Bus was examined as R.W.1, but no documents were marked.

7. On appraisal of evidence on record, the Tribunal held Issue No.1 in favour of the petitioner, disowning the version of R.W.1 that the petitioner himself dashed against the stationed bus, basing on the contents in the charge sheet, which reflected that the Bus was not stationed, but it was being driven at the relevant point of time by the 1st respondent – driver in a rash and negligent manner. On issue No.2, the Tribunal has taken the income of the petitioner at Rs.1,500/- per month or Rs.18,000/- per annum and believing the disability of the petitioner at 30% as per Ex.A.5-Disability Certificate issued by District Medical Board, Vizianagaram, and by applying the multiplier '17' applicable to the age of the petitioner as 33 years, as referred in Ex.A.2 – true copy of Wound Certificate, arrived at a sum of Rs.91,800/- towards loss of earning capacity, besides granting a sum of Rs.8,000/- towards pain and suffering, Rs.2,200/- towards medicines, transport and extra nourishment. Thus, the Tribunal has awarded a total sum of Rs.1,02,000/- towards compensation to the petitioner and against respondents with interest @ 9% per annum from the date of petition till the date of realisation, while directing respondents to deposit the said amount within one month from the date of the order, by order and decree dated 02.04.2004.

8. The aforesaid order is under challenge in the instant appeal by the appellants-Corporation contending in the grounds of appeal, that the Tribunal went wrong in attributing negligence on the part of respondent No.1-driver of the offending Bus, though the bus was in a lying state at the time of accident, that the Tribunal also went wrong in fixing the age of the petitioner as 33 years without there being any evidence on record and, therefore, sought to set aside the order and decree passed by the Tribunal.

9. Heard Sri Arun Kumar Lathker, learned Standing Counsel for the appellants-Corporation, as well as Sri M.S.R. Subramanyam, learned counsel for 1st respondent-petitioner. There is an endorsement that respondent No.2-driver of the offending Bus is not a necessary party to this appeal. Perused the impugned order and the evidence on record, both oral and documentary.

10. A perusal of Exs.A.1 and A.3, which are true copy of FIR in Crime No.77/1999 of Gantiyada Police Station, and copy of charge sheet, respectively, would reveal that the 1st respondent-driver has driven the RTC Bus in a rash and negligent manner and dashed the petitioner's scooter and, therefore, the finding recorded by the Tribunal does not warrant any interference as the same is based on appreciation of evidence and the argument advanced by the learned Standing Counsel for the appellant-Corporation is without any merit.

11. Concerning the partial permanent disability sustained by the petitioner and determination of compensation, Ex.A.5 – Disability Certificate was issued by the District Medical Board assessing the permanent partial disability sustained by the petitioner at 30%. Certainly, the same cannot be disputed and it cannot be said that the Tribunal erred in recording a finding holding that the petitioner sustained partial permanent disability. Even the earnings of the petitioner computed by the Tribunal at Rs.50/- per day cannot be faulted with, in the absence of any proof being submitted by the petitioner towards his earnings.

12. However, concerning the multiplier factor, the Tribunal has taken multiplier '17'. But, in view of the decision of the Apex Court

i n SARLA VERMA & OTHERS V. DELHI TRANSPORT CORPORATION AND ANOTHER^[1], the multiplier '16' is applicable for the age group of persons between 31 and 35 years. Therefore, by taking the annual income of the petitioner at Rs.18,000/- and partial permanent disability at 30%, if multiplier '16' is applied, it works out to Rs.86,400/- (Rs.18,000/- x 16 x 30%) as against the amount awarded by the Tribunal at Rs.91,800/- under the head loss of future earnings. The amounts awarded by the Tribunal under other heads are maintained. Thus, the compensation awarded by the Tribunal is reduced from Rs.1,02,000/- to Rs.96,600/-.

13. So far as rate of interest @ 9% per annum awarded by the Tribunal is concerned, the same is reduced to Rs.7.5% per annum as per the decision of the Hon'ble Supreme Court in RAJESH AND OTHERS V. RAJBIR SINGH AND OTHERS^[2].

14. Accordingly, the Civil Miscellaneous Appeal is allowed in part, reducing the amount of compensation awarded by the Tribunal to the petitioner from Rs.1,02,000/- to Rs.96,600/- (Rupees ninety six thousand six hundred only) along with interest @ 7.5% per annum from the date of petition till the date of realisation. No order as to costs.

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

JUSTICE A. SHANKAR NARAYANA

09.02.2016.

Msr

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[\[1\]](#) (2009) 6 Supreme Court Cases 121

[\[2\]](#) 2013 ACJ 1403