

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No.268 OF 2009

JUDGMENT:

Aggrieved by the award and decree dated 13.02.2008 in O.P.No.112 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-XIV Additional Chief Judge, City Civil Court (Fast Track Court), Hyderabad (for short, 'the Tribunal'), whereby and whereunder a sum of Rs.1,22,830/- was granted as compensation for the injuries sustained by the respondent herein in a road accident, as against the claim of Rs.3,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), the present appeal is preferred by respondent Nos.1 and 2, representing erstwhile Andhra Pradesh State Road Transport Corporation (for short, 'the Corporation'), to modify the order and decree, as the amount granted is excessive.

2. The respondent herein is the petitioner, while appellant Nos.1 and 2 herein were respondent Nos.1 and 2, respectively, in the original petition.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts would show that on 12.12.2005 at about 9.10 a.m., while the petitioner, working as a Traffic Inspector, was on point duty at Dilsukhnagar Bus Stand, an RTC bus bearing registration No. AP 10 Z 6933, driven at high speed in a rash and negligent manner, came and hit him, due to which, he fell down and, in fact, it ran over his both legs, resulting in fractures. He was immediately shifted to Nizams Institute of Medical Sciences,

Punjagutta.

5. Claiming that he has spent huge amount and undergone untold pain and suffering and could not become normal, the petitioner sought Rs.3,00,000/- as compensation before the Tribunal.

6. The Corporation opposed the claim by filing a counter, attempting to throw the negligent act on the petitioner.

7. The Tribunal has framed three issues basing on the said pleadings.

8. During enquiry, the petitioner examined himself as P.W.1, besides examining the Medical Officer - Dr.P.Chandrashekhar as P.W.2, and marked Exs.A1 to A13. On behalf of the Corporation, one K.V.Badram, driver of the RTC bus at the relevant time, was examined as R.W.1, but no documents were marked.

9. The Tribunal, having appraised the evidence of P.W.1 and R.W.1 and the documentary evidence Ex.A1, which is the certified copy of the First Information Report, while rejecting the evidence of R.W.1 and preferring the evidence of P.W.1, recorded a finding that due to rash and negligent driving of R.W.1, the accident had occurred. Accordingly, tendered a finding in favour of the petitioner.

10. On issue No.2, the Tribunal did not agree with the contents of Ex.A13 - disability certificate issued by P.W.2 and proceeded with awarding amounts by examining the nature of injuries sustained by the petitioner. The Tribunal, thus, awarded a sum of Rs.15,000/- and Rs.30,000/- for two grievous injuries sustained by the petitioner and, in view of deformity of 2nd toe left

as could be seen from Exs.A3 and A4 and amputation flap being planned as per Ex.A5, granted another sum of Rs.25,000/-, thus, making a total sum of Rs.55,000/- towards injuries. Besides the same, the Tribunal granted Rs.15,000/- towards pain and suffering, Rs.38,000/- towards medical expenses basing on Ex.A10 - bunch of medical bills. Towards loss of income, the Tribunal assessed Rs.10,830/- taking three months as recovery period @ Rs.3,610/- per month, which is half of the basic pay of the petitioner, and, thus, granted compensation of Rs.1,22,830/- with interest at 7.5% per annum.

11. The said order is under challenge mainly contending in the grounds that the Tribunal ought not to have just believed the evidence of P.W.1 by discarding R.W.1's evidence, as no reasons have been assigned as to why the evidence of P.W.1 was preferred to that of R.W.1's evidence. It is also agitated that the maxim *res ipsa loquitur* would attract the fact situation, in which event, the negligence is only on the petitioner, but not on the part of R.W.1. The further ground raised is that the amount of Rs.30,000/- awarded by the Tribunal towards medical bills is incorrect, in view of the fact that there would have been reimbursement as the petitioner is a Government servant. Thus, the appellants sought to set aside the award and the decree passed by the Tribunal.

12. Heard Sri N.Vasudeva Reddy, learned Standing Counsel for the appellants, and Sri B.Venkat Reddy, learned counsel for the respondent.

13. Perused the order and evidence on record.

14. In fact, the compensation awarded by the Tribunal appears to be on lower side on observing the nature of injuries sustained by the petitioner. The petitioner, in fact, sustained fractures to both legs and there has been deformity of 2nd toe left, which must have been even amputated by this time. In that view of the matter, when looked at the amount of Rs.55,000/- awarded by the Tribunal towards injuries, certainly, it cannot be said as arbitrary and excessive. The other amounts granted by the Tribunal narrated in the above do not warrant interference. It is no doubt true, the petitioner would have the facility of medical reimbursement, but nothing is forthcoming from the side of the respondents to show that the same was availed by the petitioner. In that event, certainly, it has to be held that the present appeal is without any merit.

15. The instant appeal is, therefore, dismissed, confirming the order and decree passed by the Tribunal. There shall be no order as to costs.

16. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand disposed of.

A. SHANKAR NARAYANA, J