

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

M.A.C.M.A.No.389 of 2010

JUDGMENT:

The respondent-Andhra Pradesh State Road Transport Corporation (for short 'APSRTC'), to the claim petition of M.V.O.P.No.95 of 2008, maintained the appeal, impugning the award of the Tribunal dated 09.11.2009, filed by the injured claimant under Section 166 of the Motor Vehicles Act (for short 'the Act'), for a compensation of Rs.2,00,000/-, for the injuries sustained by him in the accident dated 26.07.2007, and the tribunal awarded compensation of Rs.1,40,000/- with interest at 7.5%p.a. holding that the accident was the result of the rash and negligent driving of the driver of the APSRTC bus, while the injured was proceeding on his scooter.

2. The contentions in the grounds of appeal by the appellant-APSRTC in nutshell are that there is no negligence on the part of the driver of the APSRTC bus, but for own negligence of the injured-bike rider with pillion rider, having hit bus on left side of the bumper and fell down; that the Tribunal gravely erred in granting compensation instead of dismissing the claim and in holding that the remedy, if any, is against the owner and insurer of the scooter; and the Tribunal ought to have fixed composite negligence on the part of the

injured-scooterist and the compensation awarded is excessive and arbitrary. Hence, to allow the appeal by exonerating the insurer from liability and otherwise fix contributory negligence of the injured and reduce the compensation.

3. Whereas, it is the submission of the learned counsel for the claimant that the award of the tribunal holds good and for this Court while sitting in appeal, there is nothing to interfere and hence to dismiss the appeal.

4. Heard and perused the material on record.

5. Coming to the manner of accident, the injured was examined as PW.1 and the pillion rider was not examined. Ex.A1-F.I.R. and Ex.A3-charge sheet are against the driver of the bus, who examined as RW.1. The injured claimed that while he was proceeding from Anamalapadu Village along with pillion rider on his scooter, in the broad day light at 2.00 p.m. near A.V.S. College turning on NH.5 road, due to the rash and negligent driving of the driver of the APSRTC bus, which was proceeding in opposite direction dashed his scooter and they sustained injuries. The evidence of RW.1-bus driver in support of counter contest of APSRTC is that on seeing the scooterist with pillion rider coming in opposite direction, he stopped the bus on the left side of road at A.V.S. College. While the passengers were getting down, the scooterist in a rash and

negligent manner hit the bus on left side bumper, fell down and sustained injuries. The fact that F.I.R. was registered against the bus driver is not in dispute, so also, the police after investigation filed charge sheet. But, bus driver is not the injured of the accident. No scene observation report or M.V.I.report filed regarding any damage to the scooter. Even the very FIR and the evidence of PW.1 disclose that while the injured claimant was proceeding in opposite direction and negotiating a curve, the accident occurred and from the evidence of RW.1-driver also it dashed on left side of the bumper, which clearly reveals that there is contribution by the injured also to the accident. Contributory negligence depends upon several factors including size of the vehicle, condition of the road, manner of accident from scene observation report, extent of damage on which side of the respective vehicles. The said material is lacking before the Court, thereby, the only size of the vehicles that can be taken into consideration and place of accident in negotiating a curve by proceeding opposite direction, any of them can avert the accident had they been cautious, thereby, it is just to fix the contribution at 20% on the scooterist to proceed against the owner, if there is any pay and recovery coverage and 80% liability on the APSRTC.

6. Coming to the quantum of compensation, PW2-doctor deposed that the injured sustained 25% disability and there is no disability certificate issued and there is no even basis for him so, to depose. However, the tribunal fixed compensation of Rs.1,40,000/-, by considering the injuries including the fractures and from any permanent partial disability. Once such is the case, 80% liability comes to Rs.1,12,000/-.

7. Accordingly, the appeal is allowed in part by reducing the compensation from Rs.1,40,000/- to Rs.1,12,000/-. Rest of the terms of the award of the Tribunal holds good. There is no order as to costs. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

Dr. B. SIVA SANKARA RAO, J

Date:14.11.2016
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