

HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

M.A. C.M.A. No.1873 of 2010

JUDGMENT :

This is an appeal arising out of the judgment and decree, dated 18th March, 2008 in M.V.O.P.No.16 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge, Tirupati.

(2) APSRTC is the appellant herein.

(3) The brief facts of the case are that on 4.9.2005 while the claimant was going on his motorcycle bearing No.AP 03 M 9633 near Gopalakrishnapuram S.T. Colony on the left side of the road, an APSRTC bus bearing registration No.AP 10 Z 6102 belongs to the respondent came in a rash and negligent manner in the opposite direction and dashed the motorcycle of the claimant. The claimant fell on the road and sustained multiple injuries all over his body. His teeth were broken and he was taken to Area Hospital, Srikalahasti. He also sustained crush injury over the right lower limb, exposing nerves, bones and muscles and a lacerated injury over right side of forehead, right eye and injury over upper teeth and commuted fracture over the head and neck of fibula. He was admitted in Vijaya Health Centre, Chennai on 8.9.2005 and he was discharged on 28.9.2005. He had taken treatment from the private Doctors thereafter. The Station House Officer, K.V.B.Puram Police Station, registered a case in Crime No.44 of 2005 under Sections 338 and 279 I.P.C. against the driver of the respondent. The respondent is APSRTC who is liable to pay compensation to the petitioner.

(4) The respondent filed counter denying the negligence on the part of the driver of the APSRTC bus and attributing negligence to the claimant that due to his mistake the accident has occurred. It is also contended that the petition is

bad for non-joinder of insurance company of the motorcycle bearing No.AP 3 M 9633. It is further contended that the claim of the petitioner is excessive and the insurance company of the motorcycle is liable to pay the claim. Basing on the pleadings of the parties, the Tribunal framed the following issues :

1. Whether the pleaded accident occurred and if so was it due to fault of the driver of APSRTC bus bearing No.AP 10 Z 6102?
2. Whether the petitioner suffered injuries in the said accident and entitled to compensation and if so, to what amount?
3. Whether the O.P is bad for non-joinder of necessary parties?
4. To what relief?

(5) The Tribunal examined P.W.1 – injured and P.W.2 – Dr.D.Venkata Subba Rao and got marked documents Exs.A1 to A7 and Ex.X1. On consideration of the oral and documentary evidence, the Tribunal awarded compensation of Rs.2,78,776/- for the injuries sustained by the petitioner in the accident.

(6) The point for consideration in this matter is, whether there is no rash and negligence on the part of the driver of the APSRTC bus ? and whether the respondent-claimant is negligent in riding the motorcycle and was responsible for the accident ?

(7) Heard the arguments of Sri Srinivasa Rao appearing on behalf of Sri A.Rama Rao, learned Standing Counsel for APSRTC.

(8) Notice is served to the respondent, but none appeared on behalf of the respondent. Therefore, respondent's arguments are treated as heard.

(9) This is an appeal filed by the APSRTC questioning their liability on the ground that the driver of the APSRTC bus was not negligent in driving the bus and he was not responsible for the accident. On the other hand, it is contended that the rider of the motorcycle himself was negligent in riding and because of him the accident has occurred. It is submitted that on 4.9.2005 while

the APSRTC bus was plying from Dasukuppam to Srikalahasti, reached Gopalakrishnapuram crossroads at 11.00 AM, one auto came in opposite direction. The driver of the bus in order to give way to the auto swerved the bus to his left side, and a motorcycle bearing No.AP 03 M 9633 came at a high speed behind the auto, and on seeing the same, the driver of the bus stopped the bus and in the meanwhile the motorcycle dashed the bus, then the claimant fell on the road and sustained injuries.

(10) The learned counsel for the appellant submitted that there is no negligence on the part of the driver of the bus and it was only trying to give way to the auto, which is coming in opposite direction, by that the bus came to left side; At that time the motorcycle came at a high-speed behind the auto, and dashed against the bus. Therefore, the appellant attributes negligence to the rider of the motorcycle; It is contended that as he came behind the auto at a high-speed, and he met with an accident, and it was only due to his negligence the accident has occurred.

(11) It is pertinent to note that the driver of the APSRTC bus was not examined to prove the manner in which the accident has occurred. If the driver of the bus had been examined, the manner in which the accident had occurred would have been brought to light. The non-examination of the driver of the bus by the APSRTC would make the version of P.W.1 more believable. In the cross-examination of P.W.1 there was a suggestion to the effect that due to his negligence he slipped and fell on the road and the driver of the APSRTC bus was not responsible for the accident and the driver was not negligent in driving the bus. The said suggestion was denied by P.W.1. In fact, APSRTC has not taken any steps to examine any witnesses like the passengers in the bus or the conductor of the bus or the passers-by on the road, or any independent third parties to prove the manner in which the accident has occurred. The Tribunal has rightly placed reliance on the testimony of P.W.1 and the documents Ex.A1 –

F.I.R. and Ex.A2 – charge-sheet which clearly reveals that the accident occurred due to the rash and negligent driving of the driver of the APSRTC bus. Therefore, there are no valid reasons to come to a conclusion that the driver of the bus has not driven the bus in a rash and negligent manner; There is no evidence to show that it was only due to the negligence on the part of the rider of the motorcycle the accident has occurred. Therefore, I do not find any valid ground to interfere with the findings of the Tribunal in this regard.

(12) In the result, the appeal is dismissed. No order as to costs.

(13) Consequently, Miscellaneous Petitions pending, if any, shall stand closed.

08th March, 2017
skmr



GUDI SEVA SHYAM PRASAD, J.