

HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A. No.978 of 2009

JUDGMENT:

1. The appellant aggrieved by the award dated 3.11.2008 in M.V.O.P.No.1112 of 2007 on the file of the Chairman, Motor Accident Claims Tribunal (District Judge) at Khammam, preferred this appeal, on the ground that the accident occurred due to rash and negligent driving of the driver of RTC bus bearing No.AP 9Z 2094 and that the Tribunal having found that the negligence is 50%, fastened the entire liability on RTC, which is illegal. Further, it is contended that the Doctor, who treated the claimant, is not examined and therefore, awarding of Rs.40,000/- under the head of Injuries is excessive.

2. On behalf of the claimant, it is contended that the Tribunal awarded meager amount for the injuries sustained, without considering the gravity of the injuries. The Tribunal awarded lump sum amount of Rs.63,000/- having taken into consideration the evidence on record, which is legal and sustainable.

3. The brief facts of the case are as follows:

On 23.8.2007 at 6 p.m., when the claimant boarded RTC bus bearing No.AP 9Z 2094, the driver of the bus drove it in a rash and negligent manner and took a turn of the bus negligently, as a result of which, the left leg of the claimant crushed under foot board and the claimant received injuries. He lost his greater toe at the level of Metatarso phalangeal joint of the left foot cutting bleeding.

4. Having considered the pleadings of both the parties, the Tribunal settled the following issues for consideration:

1. Whether the accident took place due to rash and negligent driving of the RTC bus bearing No.AP 9Z 2094 by its driver?
2. Whether the claimant-petitioner is entitled to claim any compensation? If so, to what amount and from which of the respondents ?
3. To what relief?

5. In order to substantiate his case, the claimant himself examined as P.W.1 and got Exs.A1 to A5 marked. No oral or documentary evidence was adduced on behalf of the respondents.

6. It is the evidence of P.W.1, who is injured, that as usual after attending the classes on 23.8.2007 at about 18 hours, in order to go to his village Banapuram, he went to bus stop, which is in the outskirts of village of Mudigonda and he boarded RTC bus bearing No.AP 9Z 2094 coming from Khammam to Vallabhi at Junior College, Mudigonda, and at the same time, the driver of the bus drove it in a rash and negligent manner with high speed and took a turning of the bus negligently, as a result of which, the left leg of the injured crushed under the foot board of the bus and ground and he received the injuries viz., (1) separated greater toe at the level of Metatarsal Phalanx joint of left foot bleeding cut injuries (2) Separated second toe at the level of metatarsal phalanx joint of the left foot bleeding cut injuries. Ex.A1 is the certified copy of FIR; Ex.A2 is the certified copy of charge sheet; Exs.A3 and A4 are the medical certificate and out-patient ticket and Ex.A5 is a bunch of bills. The claimant himself stated that he boarded the RTC bus while it was moving, and at that time, the driver of the bus was taking a turn with high speed, as a result of which, the left leg of the claimant crushed under the foot board of the bus and ground. In Ex.A2-certified copy of charge sheet, the investigation officer stated that the driver of the RTC bus drove it in a rash and negligent manner, as a result of which, the left leg thumb and index finger of the

claimant crushed underneath the door and cut away at bus stop situated at the outskirts of the village.

7. When the evidence of P.W.1 read with Ex.A1-FIR, A2-charge sheet goes to suggest that after P.W.1 boarded the bus, at the same time, the driver moved the bus with high speed in a rash and negligent manner, resulting in crushing of the left leg of the claimant under foot board and the ground. No rebuttal evidence either oral or documentary was produced by the respondents.

8. In the award at paragraph No.8, the Tribunal observed that “inter-alia in the cross-examination, nothing has been elicited to disbelieve the version of the chief-examination filed by the claim petitioner in the form of affidavit”. At paragraph No.10, the Tribunal observed that “as it could be seen from the averments of the claim petition as well as Ex.A1-certified copy of FIR, the claim petitioner having boarded into the bus, he supposed to enter into the bus, whereas the claim petitioner was standing on the foot board. Therefore, the Tribunal has no hesitation to hold that there is 50% contributory negligence on the part of the claim petitioner in receiving the injuries.” Further at paragraph No.14, the Tribunal observed that “by going through the contents of A2- charge sheet and Ex.A1-FIR, it can be said that the claimant himself was responsible for receiving the injuries because he was standing on the foot board of the bus at the time of the accident.”

9. The findings of the Tribunal at Paragraph Nos.10 and 14 go to suggest that according to the Tribunal, the claimant stood on the foot board at the time of accident and therefore, there is 50% contributory negligence on the part of the claimant. As per the evidence of P.W.1 and

the earliest report under Ex.A1 and the charge sheet under Ex.A2, at the bus stop P.W.1 boarded the bus and at the same time, the driver of the bus drove it with high speed in a rash and negligent manner and took a turn. There is no rebuttal evidence produced by the respondents in this regard.

10. In the counter, the 2nd respondent, who is appellant herein, took a plea that as can be seen from the averments in the petition, at the time of the alleged accident, there was gross negligence on the part of the claimant, who stood on the foot board of the bus in a negligent manner and that he sustained minor injuries.

11. In order to substantiate that the claimant stood on the foot board at the time of accident, the respondents did not enter into the witness box. There is no rebuttal evidence. More so, either the averments in the claim petition or in FIR and charge sheet do not establish that the claimant stood on the foot board at the time of accident. It is the specific evidence of P.W.1 and the assertion in Exs.A1-FIR and A2-certified copy of charge sheet of the investigation officer that while the claimant was traveling in the bus, the driver of the bus drove it in a rash and negligent manner and took a turn in a rash and negligent manner. There is no time for the claimant to go into the bus. While he was entering into the bus, the driver drove the bus with high speed. The finding of the Tribunal that there is contributory negligence of 50% on the part of P.W.1 is perverse and is not supported by any oral and documentary evidence.

12. With regard to the injuries, there is the evidence of P.W.1, who deposed that after the accident, he was shifted to Government Headquarters Hospital, Khammam, wherein he was treated as inpatient for a period of 9 days and during his treatment, necessary clinical tests were

conducted, in which it was found that there is loss of greater toe at the level of Metatarsal phalanx joint of left foot bleeding cut injuries and separation of second toe at the level of metatarsal phalanx joint of the left foot bleeding cut injuries and there is some disfiguration of both the toes. After considering the oral and documentary evidence under Exs.A3-wound certificate; Ex.A4-out patient ticket and Ex.A5-medical bills, the Tribunal awarded Rs.40,000/- towards compensation for separation of toes; Rs.10,000/- under the head of disfiguration; Rs.10,000/- towards pain and suffering and an amount of Rs.3,000/- towards medical expenditure. In all, the Tribunal awarded Rs.63,000/- towards compensation.

13. In the above circumstances, I find that the award of Rs.63,000/- by the Tribunal directing respondents Nos.1 and 2 therein to pay it jointly and severally is legal and valid. However, insofar as the finding of the Tribunal as to the 50% contributory negligence is concerned, the said finding is set aside. I find that the award of Rs.63,000/- to the claimant as compensation does not suffer from any illegality or irregularity warranting interference of this Court.

14. Accordingly, the MACMA is dismissed. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE N. BALAYOGI

Date: 25th October, 2017
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HONOURABLE SRI JUSTICE N. BALAYOGI

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