

THE HON'BLE MS. JUSTICE J. UMA DEVI

MACMA NO. 1150 OF 2007

JUDGMENT:

Aggrieved by the order dated 5.2.2007 passed by the Chairman, Motor Accident Claims Tribunal-cum-V-Addl. District Judge (Fast Track Court), Nizamabad dismissing O.P.No. 1358 of 2002, the petitioner therein has filed the present appeal.

The parties will hereinafter be referred to as the petitioner and the respondents as they are arrayed in the aforementioned OP.

The case of the petitioner as narrated in his claim petition is briefly stated as under,

That on 30.7.2002 while the petitioner was travelling in a bus bearing No. AP-10-Z-6333 from Chandoor towards Nizamabad, when it reached Malkapur Thanda village on Varni-Nizamabad road at about 3.30 P.M. a lorry tanker bearing No. AP-37-T-4950 came in a rash and negligent manner with high speed opposite to the aforementioned bus on wrong side, and dashed against the bus, as the result of it, the petitioner received fracture to his right hand, right elbow, commuted fracture, right humerus compound fracture, head injury and injuries to other parts of his body. Soon after the accident, he was taken to Government Headquarters hospital, Nizamabad, from there he was shifted to Satya Orthopaedic Nursing Home, Nizamabad where he obtained treatment from Dr. Satyanarayana Anumalla, Orthopaedic Surgeon who operated his right hand by inserting a rod. The petitioner laid a claim of Rs.3.00

lakhs as against the respondents 1 to 3 who were the owners and insurer of the offending lorry tanker bearing No. AP-37-T-4950.

The Tribunal, on appreciation of evidence given by the petitioner and the documentary evidence produced by him, rejected his claim for the reason that he failed to examine the driver or conductor of the RTC bus in which he travelled at the relevant point of time.

The facts, which are not in dispute by the respondents, are that the police of Nizamabad Rural police station registered a case in Cr.No. 162 of 2002 against the driver of the lorry tanker bearing No. AP-37-T-4950 based on the complaint given by the petitioner and filed a charge sheet against him after completion of investigation. Non-examination of any passenger of the bus or the conductor or driver of the said bus cannot be a ground to discard the evidence of P.W.1 who received injuries in the accident dated 30.7.2002 which occurred due to the negligent driving of the lorry tanker bearing No. AP-37-T-4950 by its driver against whom police of Nizamabad Rural Police Station laid a charge sheet on thorough investigation of the case. Though no substantial material is produced by the owner and insurer of the lorry tanker which is responsible for the occurrence of the accident as per the contents of the FIR and the charge sheet, the Tribunal has not taken the evidence of P.W.1 into consideration which clinchingly establishes the fact that he sustained injuries while he was travelling in the RTC bus which was hit by the offending lorry tanker due to negligent driving of it by its driver. The Tribunal doubted the testimony of the petitioner for the reason that he went to the hospital at 3.50 P.M. within 20 minutes after the accident. It is evident from the

material on record that he went to the hospital for treatment and there was no delay as such in getting himself examined through medical officer. There may be delay in lodging of the complaint before the police, but for that reason the entire testimony of P.W.1 which has been corroborated by the documentary evidence cannot be brushed aside. The Tribunal, by giving undue importance to the delay, if any, caused in lodging of the complaint before the police, seems to have rejected the claim made by the petitioner in respect of the injuries received by him in the accident. I am not convinced with the reasons recorded by the Tribunal to reject his case. In my opinion, the reasons recorded by the Tribunal to disallow the claim made by the petitioner as against the owner and insurer of the offending lorry tanker are wholly incorrect.

On appreciation of ocular testimony of the petitioner which is fully supported by the documentary evidence which is clear and categorical as to the nature of injuries he received to his right hand for which he took treatment in the hospital of P.W.2-doctor, I am of the view that awarding compensation of Rs.15,000/- under the head of pain and suffering and medical expenditure is just and reasonable.

In the result, the appeal is allowed setting aside the impugned order in OP No. 1358 of 2002 on the file of the Motor Accidents Claims Tribunal-cum-V-Addl. District Judge (Fast Track Court), Nizamabad by awarding compensation of Rs.15,000/- (Rupees Fifteen Thousands only) to the petitioner. The said compensation amount of Rs.15,000/- is payable to the petitioner together with interest @ 7.5% per annum from the date of filing of the claim petition till realization by the respondents jointly

and severally. Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

JUSTICE J. UMA DEVI

Dt. 22.12.2017
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