

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.3053 OF 2005

AND

CROSS OBJECTIONS (SR) No.8004 OF 2006

COMMON JUDGMENT:

1. M.A.C.M.A. No.3053 of 2005, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), and Cross-Objections (SR) No.8004 of 2006, under Order XLI Rule 22 of C.P.C., are separately filed by the appellant-A.P.S.R.T.C. and Cross-objector-petitioner, aggrieved by the award dated 06.07.2005 passed in M.V.O.P. No.16 of 2003 by the Chairperson, Motor Vehicle Accidents Claims Tribunal-cum-VIII Additional District Judge (Fast Track Court at Guntur (for short, 'the Tribunal'), whereby the Tribunal granted a compensation of Rs.80,000/- against the claim of Rs.1,25,000/- for the injuries sustained by the petitioner in a motor accident occurred on 05.10.2002 and directed the respondent-A.P.S.R.TC., being owner of bus bearing No.AP 9Z 5886 (for short, 'the crime vehicle'), to pay the same with interest at the rate of 9% p.a. from the date of petition till the date of deposit.

2. The parties hereinafter are referred to as arrayed before the Tribunal.

3. M.A.C.M.A. No.3053 of 2005 is filed by the respondent-A.P.S.R.T.C to set-aside the impugned award and Cross-Objections (SR) No.8004 of 2006 is filed by the respondent-petitioner seeking enhancement of compensation.

4. Heard the learned counsel for the petitioner and learned standing counsel for the respondent-A.P.S.R.T.C. and perused the record.

5. Learned standing counsel for the respondent-A.P.S.R.T.C. would submit that the findings of the Tribunal are contrary to the evidence on record and facts of the case; there is contributory negligence even on the part of the petitioner as he made an attempt to reserve his seat by throwing a towel through the window in the running crime vehicle, before it is arriving on platform. Moreover, there is specific admission of negligence by the petitioner himself under Ex.B-1, Rs.50/- stamp paper. The Tribunal without considering these aspects, erroneously granted a compensation of Rs.80,000/- with interest at the rate of 9% p.a. and hence prayed to allow the Appeal setting-aside the impugned award.

6. On the other hand, learned counsel for the petitioner would submit that the petitioner suffered amputation of right leg below knee; there is medical evidence to that effect; the Tribunal had taken the annual earnings of the petitioner as Rs.15,000/- and granted Rs.60,000/- towards 80% disability suffered by the petitioner, including an amount of Rs.5,000/- towards medical expenses, Rs.10,000/- towards pain and suffering and Rs.5,000/- towards special diet; in all, granted a compensation of Rs.80,000/- which is quite low and meagre and ultimately prayed to enhance the compensation as prayed for.

7. In view of the rival submissions, the following points have come up for determination:

1. Whether there is contributory negligence on the part of petitioner in sustaining the alleged injuries?
2. Whether the petitioner is entitled for enhancement of compensation?
3. Whether the impugned award dated 06.07.2005 is liable to be set-aside?

8. **POINT No.1:** To substantiate the claim, the petitioner himself was examined as P.W.1 and got examined P.W.2, doctor, who treated the petitioner, and also marked Exs.A-1 to A-5 and Exs.X-1 and X-2. Ex.A-1 is the certified copy of F.I.R. in Crime No.94 of 2002 of Tenali Police Station, Ex.A-2 is the certified copy of charge sheet, Ex.A-3 is the certified copy of wound certificate, Ex.A-4 is the discharge summary issued by Government Hospital, Tenali, and Ex.A-5 is the medical bills for Rs.353/-; Ex.X-1 is the case sheet and Ex.X-2 is the x-ray. On behalf of the respondent-A.P.S.R.T.C., the driver of crime vehicle was examined as R.W.1 and marked Ex.B-1 – Rs.50/- stamp paper signed by the petitioner, to rebut the case of the petitioner. The Criminal Case registered against R.W.1, driver of crime vehicle, shows that the driver of crime vehicle drove the bus in a rash and negligent manner and caused crush injury to the right leg of the petitioner. It is also evident from the record that the criminal case was settled between the parties in Lok-Adalat and R.W.1, the driver of crime vehicle, got acquitted in the criminal case. There is

specific evidence of the petitioner that he suffered injuries due to the rash and negligent driving of the driver of crime vehicle. P.W.1 deposed with regard to the manner of occurrence of accident and the injuries suffered by him in the accident. P.W.2, doctor, who treated the petitioner, deposed about amputation of right leg of the petitioner below knee. There is corroboration of evidence of P.W.1 with the documents marked as Ex.A-1 – F.I.R. and Ex.A-2 – charge sheet respectively. The specific evidence of P.W.1 reveals that R.W.1, driver of crime vehicle, drove the same in a rash and negligent manner and caused the aforesaid injuries to the petitioner. Except Ex.B-1, Rs.50/- signed stamp paper, the respondent-A.P.S.R.T.C. failed to adduce any evidence on its behalf. Admittedly, the driver of crime vehicle is supposed to drive the crime vehicle slowly and carefully when he is parking the vehicle on the platform in the bus stand. Had the driver of crime vehicle drove the bus slowly, the petitioner would not have suffered crush injury resulting amputation to his right leg. Merely Ex.B-1, Rs.50/- stamp paper signed by the petitioner stating R.W.1 is not guilty of negligence in driving the crime vehicle, it cannot be said that there was no rashness and negligence on the part of driver of crime vehicle. The driver of crime vehicle is responsible for the occurrence of the accident. This finding has been elaborately dealt with by the Tribunal, assigned valid reasons for tagging the liability against the respondent-A.P.S.R.T.C. and there is nothing to take a different view and the same is liable to be confirmed.

9. **POINT Nos.2 & 3:** As far as grant of compensation, as per the oral and documentary evidence on record, is concerned the petitioner suffered crush injury and his right leg below knee was amputated; as per the medical evidence and the evidence of P.W.2, doctor, the petitioner was aged 63 years as on the date of accident and suffered 80% disability. The Tribunal taking the annual earnings of the petitioner as Rs.12,000/- for 80% disability and applying the relevant multiplier '5', applicable to the age group, arrived at the compensation of Rs.60,000/- towards disability and loss of future income and also awarded an amount of Rs.5,000/- towards medical expenses, Rs.10,000/- towards pain and suffering and Rs.5,000/- towards special diet; in all, granted a compensation of Rs.80,000/-, with interest at the rate of 9% p.a. from the date of petition till the date of deposit, considering the nature of injuries and the age and avocation of the petitioner. There are instances where the Apex Court and this Court awarded interest at the rate of 9% p.a. in some cases. The findings of the Tribunal are based on evidence and record and there is nothing to take a different view and interfere with the impugned award. All the submissions canvassed on behalf of both parties do not merit consideration. Accordingly, these points are answered.

10. In the result, M.A.C.M.A. No.3053 of 2005, filed by the appellant-A.P.S.R.T.C. to set-aside the impugned award, is dismissed and Cross-Objections (SR) No.8004 of 2006, filed by the respondent-petitioner (cross-objector) seeking enhancement of

compensation, are rejected confirming the award dated 06.07.2005 passed in M.V.O.P. No.16 of 2003 by the Tribunal.

11. As a sequel, pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 26.10.2017.
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