

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.2829 OF 2005

AND

M.A.C.M.A. No.545 OF 2008

COMMON JUDGMENT:

1. Both these Appeals, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), are separately filed by the appellant-petitioner and respondents-A.P.S.R.T.C., aggrieved by the award dated 21.02.2005 passed in O.P. No.236 of 2002 by the Chairman, Motor Vehicle Accidents Claims Tribunal-cum-XXI Additional Chief Judge-cum-Additional Metropolitan Sessions Judge-cum-VII Additional Metropolitan Sessions Judge, Red Hills, Nampally, Hyderabad (for short, 'the Tribunal'), whereby the Tribunal granted a compensation of Rs.72,000/- against the claim of Rs.1,00,000/- for the injuries sustained by the petitioner in a motor accident occurred on 24.11.1999 and directed both the respondents to jointly and severally pay the same with interest at the rate of 9% p.a. from the date of petition till the date of deposit.

2. M.A.C.M.A. No.2829 of 2005 is filed by the appellant-petitioner seeking enhancement of compensation; M.A.C.M.A. No.545 of 2008 is filed by the respondents-A.P.S.R.T.C to set-aside the impugned award.

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

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

5. Learned counsel for the appellant-petitioner would submit that the petitioner suffered fracture of left foot and other multiple injuries all over his body, due to which the petitioner developed limping; the Tribunal has granted a compensation of Rs.72,000/-, which is quite low and meagre, though there is medical evidence to believe that the petitioner suffered 35% permanent disability. Learned counsel further submits that though the compensation claimed by the petitioner is less, the Courts/Tribunals can grant just compensation, relied on a Larger Bench decision of this Court in ***Adam Indur Muttemma and others Vs. Rathod Reddi and others***¹ and a decision of this Court in ***M.Madhava Reddy Vs. The Vice-Chairman and Managing Director, A.P.S.R.T.C., Hyderabad and another***² and finally prayed to allow the Appeal by enhancing the compensation.

6. On the other hand, learned standing counsel for the respondents-A.P.S.R.T.C. would submit that petitioner is a lunatic in the habit of getting in and out of the moving buses; only due to his fault, slipped from moving bus and suffered the injuries, which is evident from Ex.A-1 F.I.R.; the petitioner being lunatic, the question of his earnings does not arise and there is no evidence to show that the disability suffered by him is permanent; the compensation of

¹ 2015 (4) ALD 585

² MACMA No.2931/2005 Dt.29.01.2016

Rs.72,000/- awarded by the Tribunal with interest at the rate of 9% p.a. is excessive and exorbitant and ultimately prayed to allow the Appeal setting-aside the impugned award.

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

1. Whether the petitioner suffered injuries due to the rash and negligent driving of the driver of A.P.S.R.T.C. bus bearing registration No.AEZ-5275 (for short, 'the crime vehicle')
2. Whether the award of compensation of Rs.72,000/- by the Tribunal is excessive and exorbitant?
3. Whether the petitioner is entitled for enhancement of compensation?
4. Whether the impugned award is sustainable?

8. **POINT No.1:** As per the material available on record, the petitioner is a lunatic, aged 21 years at the time of accident, is being represented throughout the proceedings by his natural father. There is evidence of P.W.1, father of petitioner, and the petitioner also examined P.Ws.2 and 3, who are the eye witness to the accident and the doctor respectively, and marked Exs.A-1 to A-7. Ex.A-1 is the certified copy of F.I.R., Ex.A-2 is the certified copy of charge sheet, Ex.A-3 is the discharge card issued by Osmania General Hospital, Hyderabad, Ex.A-4 is the certified copy of M.L.C., Ex.A-5 is the certificate of mental retardation (xerox copy), Ex.A-6 is the discharge card and Ex.A-7 is the medical bill dated 09.12.1999.

P.W.1, father of the petitioner, deposed the injuries suffered and the treatment taken by the petitioner. No evidence was adduced on behalf of the respondents-A.P.S.R.T.C. and no documents were marked on its behalf. As per Ex.A-1 - F.I.R., there is mention of negligence on the part of the driver of crime vehicle, issued for the offence under Section 337 I.P.C. In the charge sheet also there is a mention about the rashness and negligence on the part of the driver of crime vehicle; as per charge sheet P.W.2 is shown as eye witness to the occurrence of the accident. Therefore, there is clear evidence of P.W.2 with regard to the rash and negligent driving of the driver of crime vehicle in causing the accident resulting injuries to a lunatic person. P.W.3, doctor, clearly deposed about the injuries suffered by the petitioner and there is medical evidence to believe the same. No contra evidence was adduced on behalf of the respondents-A.P.S.R.T.C. to disprove the manner of occurrence of accident and the injuries suffered by the petitioner in that accident. Under these circumstances, it can be concluded that the petitioner suffered injuries due to the rash and negligent driving of the driver of the crime vehicle; the finding of the Tribunal is based on evidence and record and requires no interference by this Court.

9. **POINT Nos.2 to 4:** As far as grant of compensation is concerned, there is ocular and medical evidence to believe the injuries suffered by the petitioner as exhibited in medical record. The evidence of P.W.3, Dr.S.G.S. Dhananjay, reveals about the crush injury suffered by the petitioner to his left foot, debridement and skin grafting done to the left foot, anti septic dressing done to the foot of

the petitioner, every day, for some time; the treatment taken by the petitioner in his hospital from 29.11.1999 to 09.12.1999 and also took up follow up treatment subsequently. Ex.A-7 is the medical bill issued on the date of discharge of the petitioner, as per which the disability suffered by the petitioner is assessed around 30 to 35% to the left lower limb, which is permanent in nature. The petitioner failed to produce the certificate showing the percentage of disability suffered by him from competent authority. However, the evidence of P.W.3 is to the effect that the petitioner suffered 30 to 35% disability to the left lower limb, which is of permanent nature. The question herein is whether such injury can affect the future earning capacity of the petitioner? Admittedly, as per the evidence on record, the petitioner is a lunatic, who is under the care and custody of his natural parents and is incapable to earn.

10. Learned counsel for the petitioner further submits that the petitioner is a lunatic, who is under the care and custody of his father, who is a watchman, entitled for just and reasonable compensation, relied on the aforesaid decisions of this Court. When the petitioner failed to produce the disability certificate from the competent authority, relying on the evidence of P.W.3, assessing the disability at 35% said to have suffered by the petitioner cannot be taken as genuine. However, the Tribunal had granted an amount of Rs.50,000/- towards permanent disability, taking the crush injury into account and its impact, said amount is reasonable, and the Tribunal also granted an amount of Rs.2,000/- towards transportation, Rs.10,000/- towards medical expenses and extra nourishment and

Rs.10,000/- towards pain and suffering basing on evidence and record; in all granted a compensation of Rs.72,000/- with interest at the rate of 9% p.a. from the date of petition till the date of deposit. 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. Accordingly, these points are answered.

11. In the result, M.A.C.M.A. No.2829 of 2005 filed by the petitioner seeking enhancement of compensation and M.A.C.M.A. No.545 of 2008, filed by the respondents-A.P.S.R.T.C to set-aside the impugned award, are dismissed confirming the award dated 21.02.2005 passed in O.P. No.236 of 2002 by the Tribunal.

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

Dr. SHAMEEM AKTHER, J

Date: 24.10.2017.
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HON'BLE Dr. JUSTICE SHAMEEM AKTHER

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