

THE HON'BLE SRI JUSTICE M.S.K. JAISWAL

M.A.C.M.A.Nos.297 of 2013 and 1643 of 2014

COMMON JUDGMENT

Since both these appeals arise out of the same accident, they are being disposed of by this common judgment.

2. MA CMA No.297 of 2013 is filed by APSRTC and MA CMA No.1643 of 2014 is filed by appellant-claimant against the order and decree dated 09.10.2012 passed in O.P.No.628 of 2006 by the Chairman, Motor Accident Claims Tribunal-cum-III Additional District Judge (FTC), Asifabad.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the O.P.

4. The facts, in brief, are that on 06.12.2004 at about 7.15 PM., while the petitioner/claimant was driving a motorcycle bearing No.AP 1F 5684 along with pillion rider from Nambala Village to Bellampalli, and when they reached near Laxmipur stage, one APSRTC bus bearing No.AP-10Z-9647 driven by its driver in a rash and negligent manner came in opposite direction and dashed against the motorcycle, due to which, the claimant and the pillion rider sustained severe injuries. The claimant sustained right frontal bone compound depressed fracture, extensive soft tissue injury on the right half of the face, fracture of maxillary, avulsion of right eye ball, fracture of right both bones of fore arm and other injuries all over the body. Immediately after the accident, he was shifted to Government

Hospital and from there to MGM Hospital, Warangal. The claimant underwent treatment as inpatient from 06.12.2004 to 22.12.2004. He also underwent plastic surgery for disfigurement of the face. The claimant suffered with permanent disability due to fracture injuries. Hence, he filed the claim petition claiming compensation of Rs.8,00,000/- for the injuries sustained by him in the accident.

5. The respondent-APSRTC filed counter denying the occurrence of accident and the nature of injuries sustained by claimant. It is stated that the accident occurred due to negligent driving of motorcycle by claimant himself and the amount claimed by the claimant is highly excessive and exorbitant.

6. Based on the pleadings, the Tribunal framed three issues. During enquiry, the claimant examined himself as P.W.1 and also examined P.Ws.2 to 4 and got marked Exs.A1 to A20 on his behalf. On behalf of respondents, RW1 was examined, but no document was marked.

7. After considering the entire evidence on record, the Tribunal awarded compensation of Rs.4,75,000/- as against the claim of Rs.8,00,000/- to the claimant for the injuries sustained by him in the accident.

8. Learned counsel for appellant/claimant contended that though the claimant sustained grievous injuries and underwent plastic surgery due to disfiguration besides permanent disability which immobilized to perform his duties as Mazdoor in Singareni Collories

Company Limited, the Tribunal, without taking into consideration all these aspects, awarded compensation far below the actual entitlement.

9. On the other hand, learned Standing Counsel for APSRTC contended that the claim petition itself was not maintainable only against the Corporation inasmuch as the owner and insurer of motorcycle were not arrayed as party respondents. He further contended that no satisfactory evidence was produced by claimant to hold that he sustained permanent disability, due to which, he was deprived of his future earnings. He further contended that since the claimant was allowed to continue in the employment in Singareni Collieries Company Limited, there was no deprivation of his future earnings. Learned counsel also contended that the multiplier method adopted by the Tribunal was erroneous and the compensation awarded is highly excessive and exorbitant.

10. I have carefully perused the entire evidence on record. There is no controversy with regard to the occurrence of accident on date, time and place as mentioned. However, the respondent-Corporation contended that the driver of bus was not solely responsible for the accident and the persons riding the motorcycle came and dashed against the bus and therefore, the entire liability cannot be fastened on the Corporation.

11. The evidence of P.W.1-claimant is categorical to the effect that the accident occurred due to rash and negligent driving of the driver of RTC bus. Except the self-serving testimony of the driver,

no satisfactory evidence was produced by the Corporation to show that the driver of bus was not responsible for the accident and that there was any contributory negligence on the part of the claimant, who was driving the motorcycle at the relevant point of time.

12. The investigation by police, *prima facie*, establishes that the driver of bus was responsible for the unfortunate accident and no contrary evidence is produced on record for disbelieving the sworn statement of P.W.1 and the document produced on record would also show that the accident occurred due to rash and negligent driving of the driver of bus. Therefore, the finding of the Tribunal that the accident occurred due to rash and negligent driving of the driver of Corporation cannot be said to be erroneous warranting interference by this Court.

13. With regard to quantum of compensation, learned Standing Counsel for Corporation contends that the compensation awarded by the Tribunal is excessive and exorbitant, whereas learned counsel for appellant contends that the compensation is far below the actual entitlement.

14. As per Ex.A3-medical certificate, P.W.1 sustained the following injuries:

1. Right frontal bone compound defined underlying contusion.
2. Set enzyme soft tissue injuries of the right half of the face.
3. Facio maxillary.
4. Evasions of right eyeball.
5. Right both bones fore arm.

The Medical Officer, who treated the injured, was examined as P.W.2. He categorically asserted that the injuries sustained by petitioner were grievous in nature, which resulted in permanent disability and permanent facial disfigurement and he also lost his vision of right eye all together. P.W.2 also stated about the authenticity of the medical records and exhibits produced by the claimant and also the amount said to have been spent by the claimant during the period when he was treated in the hospital as inpatient from 06.12.2004 to 20.12.2004. The claimant also produced evidence to show that even a year thereafter, he was still undergoing treatment in the hospital of Singareni Collories Company Limited where he was gainfully employed.

15. Taking into consideration the oral and documentary evidence on record, the Tribunal has determined the compensation of Rs.1,75,000/- towards injuries and disability and Rs.1,10,000/- towards medical expenses. In addition to that, the Tribunal also awarded a sum of Rs.15,000/-towards pain and suffering, Rs.25,000/- towards extra nourishment, traveling and attendant charges. Further, the Tribunal also awarded a sum of Rs.1,50,000/- towards past, present and future loss of earnings. Thus, in all a sum of Rs.4,75,000/- was awarded by the Tribunal along with interest @ 7.5% per annum from the date of petition till realization. .

16. The amounts so computed by the Tribunal are based on the documents produced by claimant and are supported by the authentic

records. Therefore, neither the amount can be said to be excessive or exorbitant nor it is too meager so as to make any enhancement.

17. The contention of learned counsel for appellant is that due to severe injuries sustained in the accident, the claimant was not able to perform his duties as performed prior to the accident, resulting loss of earnings. However, this contention seems to be incorrect inasmuch as the evidence of P.W.3 and also the documents, which establish that there is no loss of earnings to the petitioner due to the injuries, as already stated supra that the petitioner was allowed to continue in the employment in the Singareni Collories Company Limited. The Tribunal also awarded a sum of Rs.1,50,000/- for the past, present and future loss of earnings, which appears to be proper.

18. Taking into consideration all these aspects, this Court is satisfied that this is a case where neither any enhancement of compensation is warranted nor the compensation awarded is excessive and the Corporation is also liable to be fastened. Further, since the accident occurred due to rash and negligent driving of the driver of RTC bus and not due to negligence on the part of the persons who were riding the motorcycle, the contention of learned standing counsel for Corporation that the petition is bad for non-joinder of necessary parties cannot be accepted.

19. In view of the foregoing reasons, this Court is of the view that there are no merits in both these appeals and the appeals are

accordingly dismissed. No order as to costs. Miscellaneous petitions, if any, pending in these appeals shall stand dismissed.

M.S.K. JAISWAL, J.

8th June, 2017
sj

