

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

MACMA No.1404 OF 2010

JUDGMENT:

Heard learned counsel representing Sri P.Durga Prasad, learned Standing counsel for appellant and the learned counsel representing Sri P.Ganga Rami Reddy, learned counsel for respondent.

2. This appeal arises out of order dated 21.04.2010 in O.P.No.91 of 2005 on the file of Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Nellore (for short "Tribunal").

3. The respondent herein filed O.P.No.91 of 2005 under Section 166 of the Motor Vehicles Act claiming compensation of Rs.3,00,000/- on account of the injuries sustained by him in a motor vehicle accident occurred on 17-08-2003. On that day, the petitioner was proceeding of his motorcycle to Hasanapuram, A.S.Pet Mandal and when he reached near Hasanapuram, an R.T.C. bus bearing No.AP-10-Z-927 came at a high speed and dashed against his motorcycle. The claimant sustained injuries and he was admitted in Government Headquarters Hospital, Nellore. Thereafter, he was shifted to Bollineni Super Speciality Hospital, Nellore, where he was treated as inpatient as well as outpatient. Thereafter, he took treatment in Apollo Hospital, Chennai. He suffered permanent disability and he was unable to attend to his normal duties.

4. The appellant-APSRTC filed counter affidavit denying rash and negligent act on the part of the driver of RTC bus involved in the accident.

5. The appellant attributes negligence on the rider of motorcycle/claimant that he did not observe the bus and did not hear the horn blown by the busdriver and met with accident.

6. The Tribunal, on consideration of the evidence, awarded compensation of Rs.1,80,000/- with interest at 9% per annum from the date of petition till the date of realisation.

7. The appellant-APSRTC being aggrieved by the award of compensation has filed this appeal contending that the compensation awarded by the Tribunal is excessive, and also contended that the accident occurred due to the contributory negligence of the rider of motor cycle.

8. Heard the arguments of learned Standing counsel for APSRTC and learned counsel for respondent.

9. Learned Standing Counsel for appellant submits that the Tribunal awarded Rs.1,00,000/- towards medical bills, which is highly excessive and it has to be reduced.

10. Learned counsel for claimant submits that the medical bills awarded by the Tribunal is restricted to Rs.1,00,000/- though the claim made by claimant was more than Rs.1,00,000/-.

11. It is pertinent to note that the claimant has suffered grievous injuries and had taken treatment in different hospitals and he incurred huge medical expenditure. The medical officer found five fractures on the body of the claimant i.e., (1) fracture of P1 skull bones with blood clots

and air inside the brain, resulting in leak of fluid around the brain through nose; (2) fracture of collar bone on right side; (3) fracture at left wrist; (4) fracture of both bones of left leg and (5) lacerations of upper lip and forehead. Ex.A-2 is the wound certificate, which clearly reveals those injuries. Ex.A-3 is medical bills issued by Bollineni Super Speciality Hospital, Nellore and Ex.A-10 supports the medical bills.

12. The Tribunal, on consideration of the evidence, has rightly come to the conclusion that the claimant has incurred medical expenditure of Rs.1,00,000/-. Therefore, I do not see any valid grounds to interfere with the order of the Tribunal in awarding Rs.1,00,000/- towards medical expenses for the injuries sustained by the claimant.

13. The gravity of the injuries and the nature of treatment are the criteria for awarding compensation to the injured/claimant. The Tribunal has properly assessed the damages in this case and it does not call for any interference.

14. Learned Standing counsel further submits that there is contributory negligence on the part of the rider of the motorcycle. Therefore, the liability has to be apportioned.

15. Learned counsel for claimant submits that the Tribunal has rightly held that there is no negligence on the part of rider of the motor cycle and the negligence was only on the part of driver of APSRTC.

16. It is relevant to refer to para '7' of the order of the Tribunal in respect of the findings recorded with regard to rash and negligent act on the part of the driver of APSRTC bus.

“The oral and documentary evidence adduced on behalf of the petitioner clearly establishes, accident occurred due to rash and negligent driving of the driver of the vehicle bearing No.AP.10Z-927. If the driver of the bus had taken enough precaution, there was every likelihood of avoiding the accident as it had taken place during broad day light at about 10.30 or 11.00 a.m. Though the respondent examined the driver of the bus, he failed to establish that there was no negligence on his part or accident had taken place due to contributory negligence of the petitioner himself. Therefore, it is clear, the accident occurred due to rash and negligent driving of the driver of the R.T.C. bus only. Hence, I hold this point in favour of the petitioner and against the respondents.”

17. It is obvious from the findings of the Tribunal that the accident had taken place during broad day light at about 10.30 a.m. or 11.00 a.m. There is every possibility that the driver of the bus to abet the accident. The Tribunal observed that the driver of the bus failed to establish that there was no negligence on his part and that the accident occurred due to the negligence of the claimant.

18. In view of the findings of the Tribunal and the foregoing reasons, there are no valid reasons to attribute negligence on the rider of the motor cycle in the accident. Therefore, the defence of contributory negligence is not proved.

19. Learned Standing counsel submits that the rate of interest awarded by the Tribunal is excessive and, therefore, requests for reducing the same.

20. On consideration of the evidence on record and in view of the facts and circumstances of the case, the rate of interest is reduced from 9% to 7.5% per annum from the date of petition till the date of realisation.

21. In the result, the appeal is partly allowed to the extent of reducing the rate of interest from 9% to 7.5% per annum from the date of petition till the date of realisation. The rest of the award shall be intact. No order as to costs.

Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

Date: 17-02-2017
Prv



HON'BLE SRI JUSTICE SHYAM PRASAD



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Prv