

THE HON'BLE MS. JUSTICE J.UMA DEVI

M.A.C.M.A.No.1328 of 2008

AND

M.A.C.M.A.No.2189 of 2009

COMMON JUDGMENT:

Since both the appeals arise out of the judgment dated 20.12.2007 passed in Original Petition No.973 of 2005 on the file of the Motor Accidents Claims Tribunal-cum- III Additional District Judge (Fast Track Court), Nizamabad (for short, 'the Tribunal'), they are heard together and disposed of by way of this Common Judgment.

2. For the sake of convenience, parties hereinafter are referred to as they are arrayed before the Tribunal.

3. M.A.C.M.A.No.1328 of 2008 is filed by APSRTC represented by its Managing Director, RTC Cross roads, Musheerabad, Hyderabad, disputing the involvement of the RTC bus bearing No.AP 10Z 5563 and its liability for payment of compensation etc.

4. M.A.C.M.A.No.2189 of 2009 is filed by the claimant seeking enhancement of compensation, contending that compensation amount of Rs.60,000/- awarded to him under all the heads is very meagre and that the amount incurred by him towards his treatment in all was more than Rs.1,00,000/-.

5. The facts which led the parties to file the present appeals are briefly stated as under:

On 21.08.2005 at about 8:30 P.M., while the claimant was returning to his house at Kamareddy from Tadwai Village on his motorcycle bearing No.AP 25 K 1736 and reached near Lingapur Village, RTC bus bearing No.AP 10 Z 5563, which was proceeding towards Yellareddy Village from Kamareddy in a rash and negligent manner at high speed, dashed against his motorcycle, due to which, the petitioner fell down and sustained grievous injuries such as fracture to 2nd and 3rd meta tarsal bone, hairline fracture to middle finger apart from fracture to right patella and laceration on the head, abrasions on the left elbow, left cheek and on the chest. His contention was that in the above mentioned accident, the claimant sustained three grievous and three simple injuries, for which, he took treatment in Government Hospital at Kamareddy at the initial point of time, later, in Kamineni Hospital at Hyderabad and that he incurred heavy expenditure towards treatment. The claimant claimed that an amount of Rs.1,00,000/- was spent by him towards medical treatment, though evidence was produced by him establishing the treatment taken by him in Government Hospital at Kamareddy and Kamineni Hospital at Hyderabad, the Court below had awarded compensation of Rs.60,000/- and the said compensation is wholly disproportionate and inadequate. Urging the above mentioned contentions, the claimant sought the indulgence of

the Court and requested for enhancement of the compensation amount.

6. The respondent i.e., APSRTC filed counter denying the involvement of bus bearing No.AP 10 Z 5563 in the accident dated 21.08.2005. It was contended by the learned Standing Counsel for APSRTC that though it is not established by the claimant that due to negligent driving of the RTC bus bearing No.AP 10Z 5563, the accident in question had taken place, the Court below came to an erroneous conclusion that the driver of the above mentioned RTC bus was responsible for the occurrence of the accident. The Tribunal failed to see that the claimant had taken treatment as in-patient for four (04) days in Government Area Hospital, Kamareddy, which incurs no medical expenditure. The compensation awarded by the Tribunal is on higher side and that the Award passed by the Tribunal is contrary to the evidence for setting the order dated 20.12.2007 passed in O.P.No.973 of 2005 by the III Additional District Judge (FTC), Nizamabad.

7. The claimant, to establish his contention that on account of rash and negligent driving of the driver of RTC bus bearing No.AP 10 Z 5563 the accident occurred on 21.08.2005 and that he sustained grievous injuries in the above mentioned accident, relied on his own testimony and also on Exs.A.1 to A.13. He deposed that on 21.08.2005 at about 8:30 P.M., while he was proceeding on his motorcycle from Tadwai Village to Kamareddy, when he reached

near Lingapur Village Sivar, RTC bus bearing No.AP 10Z 5563, which was proceeding towards Yellareddy from Kamareddy in a rash and negligent manner with high speed and dashed his motorcycle and due to which, he fell down from the motorcycle, and received grievous injuries. He lodged a report against the driver of the bus on the next day of the accident and that the concerned police, on due investigation of the case, laid the charge sheet against driver of the RTC bus for the offence punishable under Section 338 IPC.

8. The learned trial Judge relying on the unchallenged testimony of PWs.1 and 2, which was supported by the documentary evidence produced by the claimant, arrived at a conclusion that the accident occurred due to rash and negligent driving of the driver of RTC bus bearing No.AP 10Z 5563 and the claimant sustained injuries. No oral or documentary evidence was produced by the RTC in support of its contention. Relying the oral testimony of PW.1, which was supported by the documentary evidence produced by him, the Court below had rightly found that the accident dated 21.08.2005 occurred due to the negligent driving of the driver of RTC bus bearing No.AP 10 Z 5563.

9. As per the evidence given by the claimant before the Tribunal, he received fracture to right fatula, right index finger, middle ring finger, right knee and grievous injuries on forehead, left elbow, arm, cheeks, ribs and on other parts of the body and immediately, he was shifted to Government Area Hospital, Kamareddy and there, he took

treatment for four (04) days as an in-patient and thereafter, he was taken to Sri Rama Multi Specialty Hospital, Kamareddy and from there to Kamineni Hospital, Hyderabad. The claimant also got examined Dr.C.Kamaraj, an Orthopaedic Surgeon, as PW.2. He deposed that he admitted PW.1 in his hospital on 07.10.2005 and on the next day of admission, operation was conducted for Dorsal Wedge Osteotomy and minifix application right 4th MC shaft and 4pp right, bone graft and buttress plating was done, and he was discharged from the hospital on 20.01.2005. The learned trial Judge, on thorough examination of the ocular testimony of PWs.1 and 2 and Ex.A.2, the attested copy of wound certificate issued from the Government Hospital at Kamareddy, where it was mentioned that he sustained fracture to 2nd and 3rd meta tarsal bone, fracture to middle finger and fracture to right patella and a laceration on the head, abrasions on the left elbow, left cheek and on the chest and accordingly, he sustained three grievous injuries and three simple injuries, had awarded compensation of Rs.8,000/- for fracture of meta tarsal bone; Rs.5,000/- for fracture of middle finger; Rs.10,000/- for fracture of patella and Rs.2,000/- for each simple injury received by him, totally Rs.31,000/-. But, in my opinion, the Tribunal ought to have awarded some more amount in stead of Rs.31,000/- in respect of the injuries sustained by the claimant taking into consideration the trauma suffered by the claimant on account of three grievous injuries, particularly the fractures to 2nd and 3rd meta tarsal bone and fractures to right fatula and extra

nourishment etc. On consideration of the above mentioned aspects, an amount of Rs.50,000/- is awarded as against Rs.31,000/- awarded by the Tribunal in respect of three grievous injuries and three simple injuries received by the claimant in the accident.

10. The undisputed fact is that the petitioner is forced to take treatment as in-patient for a period of two (02) weeks due to injuries received in the accident. The Tribunal ought to have awarded another sum of Rs.10,000/- towards medical treatment in addition to Rs.25,000/- considering the evidence of medical expert (PW.2), the Medical Expert, in whose hospital, he has taken treatment for a considerable period of two (02) weeks.

11. The learned trial Judge has not awarded any compensation towards transportation charges, though evidence on record clinchingly establishes that the claimant was shifted to Government Area Hospital at Kamareddy at the initial point of time, and from there, to a private hospital at Kamareddy and from there to Kamineni Hospital at Hyderabad for better treatment. Considering the above aspects, which are borne by the record, this Court is of the view that awarding a sum of Rs.10,000/- under the head of transportation charges is just and reasonable.

12. It is also noticed on perusal of the impugned order that no amount is awarded under the head of extra nourishment, which the claimant is entitled to get. Therefore, an amount of Rs.5,000/- is

awarded towards extra nourishment. Thus, in all the claimant is entitled for Rs.1,00,000/- towards compensation.

13. In the light of the aforementioned discussion made by me, M.A.C.M.A.No.2189 of 2009 is allowed in part enhancing the compensation to Rs.1,00,000/- from Rs.60,000/-. The enhanced amount shall carry interest @7.5% p.a., from the date of filing the petition vide O.P.No.973 of 2005.

14. I do not think that there is need to say that the appeal filed by the respondent in O.P.No.973 of 2005 fails, in the light of a clear finding recorded by me holding that the evidence supporting the contention of the respondent/appellant in M.A.C.M.A.No.1328 of 2008 is totally absent in the case record. Accordingly, M.A.C.M.A.No.1328 of 2008 is dismissed.

The Miscellaneous Petitions, if any, pending in these appeals shall stand closed. There shall be no order as to costs.

JUSTICE J.UMA DEVI

Date:04.10.2017
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