

THE HON' BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No. 1192 OF 2007

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the appellant-petitioner in M.V.O.P. No.219 of 2004 on the file of the Chairman, Motor Accidents Claims Tribunal-cum- Principal District Judge, Kadapa (for short, 'the Tribunal'), having got dissatisfied with the award of compensation of Rs.1,45,000/- with interest at 7.5%per annum from the date of petition till deposit of the said amount into Court, vide the order, dated 20.01.2007, as against the claim of Rs.4,00,000/-, for the injuries sustained by the petitioner, in a road accident occurred on 15.09.2003.

2. The case of the appellant would show that on 15.09.2003 the appellant was travelling in the 1st respondent's bus bearing No.AP 04 T 9756 from Pulivendula to his village Vemula, sitting in the middle seat on the right side window seat. When the bus reached near daba situated on Pulivendula – Vempalli main road, the 3rd respondent's vehicle i.e. Tractor & Trailer bearing No.AAD 3660 and 3661 came in opposite direction with a load of logs. The drivers of both the vehicles drove their respective vehicles in a rash and negligent manner at high speed without giving dim and dip lights, and while crossing each other and both vehicles on these sides, came into contact. The logs damaged the glasses and side tin cover of the bus, and the appellant received a crush injury to his right upper arm extending from right shoulder to the upper part of right forearm with a depth of 5 cm and width of 8 cm and the entire muscle was severed to the root including small nerves and that the said muscle was lost. The appellant received fractures to medial epicondyle, radius and ulna also. Immediately after the accident, the petitioner was shifted to Government Hospital, Pulivendula, where he was given first aid and thereafter, the petitioner was shifted to Government Headquarters Hospital, Kadapa in a

jeep bearing No.AP 04 U 7630 and he paid Rs.700/- towards hire charges. In the said hospital, appellant was treated as inpatient for a period of three months in a special room. He paid Rs.80/- per day for the said room. As the appellant joined in the special room he was purchased medicines from the private medical stores and also spent Rs.100/- to 200/- per day for the attendants, daily meals and extra nourishment. In all, the appellant spent an amount of Rs.50,000/- towards treatment and medical expenses and other incidental charges. Due to the accidental injuries the appellant's right hand became disabled and his finger movements are not functioning, the right upper arm turned very awkward and constituted disfiguration. Due to the injuries, the appellant is unable to attend to his agricultural operations personally and he is engaging coolies to do all the works by paying Rs.150/- to 200/- per day. Therefore, the appellant filed the petition claiming 4,00,000/- together with interest and costs, for the injuries received by him in the above said accident. The 1st respondent is the owner of the bus and the same is insured with the 2nd respondent. The 1st respondent hired the said bus to the 5th respondent i.e. APSRTC, Pulivendula Depot. The 3rd respondent is the owner of the tractor & trailer and the said vehicle is insured with the 4th respondent. Hence, all the respondents are jointly and severally liable for compensation amount.

3. All the respondents filed separate counters before the Tribunal, denying all the material allegations mentioned in the petition and contended that the amount claimed by the appellant is excessive and exorbitant. The 1st respondent-owner of the bus contended that the bus was insured with 2nd respondent and the insurance policy was valid at the time of the accident and therefore, 2nd respondent-insurer has to pay compensation, if any awarded. The 2nd respondent-insurer contended that at the time of the accident, the driver was driving the bus slowly and that he driver of the tractor drove the tractor in a rash and negligent manner and caused the accident, and therefore,

it is not liable to pay any compensation to the appellant. The 3rd respondent contended that the driver of the bus drove the bus in a rash and negligent manner and the appellant put his hand outside the window and due to rash and negligent driving of the bus, the bus dashed the road side tree due to which the appellant received injuries and further, the tractor & trailer was insured with the 4th respondent and therefore, the 4th respondent is liable to pay the compensation. The 4th respondent contended that that the tractor & trailer of the 3rd respondent is not insured with the 4th respondent at the time of accident, and therefore, it is not liable to pay the compensation. The 5th respondent APSRTC contended that the driver of the bus is not the employee of APSRTC and that the 1st respondent hired the bus to the 5th respondent on the basis of contract and the driver of the bus is the servant of the 1st respondent, and therefore, the 5th respondent is not liable to pay the compensation if any, awarded by the Tribunal. Finally, all the respondents prayed to dismiss the claim petition against them.

4. The Tribunal, after framing three issues and considering the evidence of P.Ws.1 and 2, and R.Ws.1 and 2, and Exs.A.1 to A.9 and Exs.B.1 and B.2, and also Ex.X-1 awarded compensation of Rs.1,45,000/- with interest at 7.5%per annum from the date of petition till deposit of the said amount into Court which shall be within two months from the date of the award, in favour of the appellant-petitioner against respondent Nos.1 to 5. Challenging the said award, the appellant-petitioner preferred the present appeal seeking enhancement of compensation.

5. Heard both the learned counsel for the appellant-petitioner and the learned Standing Counsel for respondent Nos.1 and 4-Insurance companies, apart from perusing the material available on record. The claim against

respondent Nos.1 and 3 is dismissed for default. Though notice served on the 5th respondent, none entered appearance till date.

6. The contention of the learned counsel for the appellant is that the Tribunal has granted an amount of Rs.1,45,000/- against the claim of Rs.4,00,000/- made by the appellant; the appellant suffered grievous injuries due to the rash and negligent driving of both the crime vehicles i.e. bus bearing No.AP 04 T 9756 and the Tractor & Trailer bearing No.AAD 3660 & 3661; the appellant was aged about 33 years and is an agriculturist and also doing private business and earning an amount of Rs.75,000/- to Rs.1,00,000/- per annum; he has suffered compress injury in his right hand, due to that he was bed ridden for more than one month in the hospital and undergone treatment and that the appellant has been suffering on account of the accidental injuries He further submitted that the Tribunal has granted Rs.30,000/- for injury, Rs.10,000/- towards medical expenses, Rs.25,000/- for the loss of pleasure in life, Rs.50,000/- for the loss of grip of hand etc., and Rs.30,000/- towards plastic surgery expenses, and in all, the Tribunal granted Rs.1,45,000/- towards compensation, which is meagre. He further submitted that the tribunal has not granted any compensation for the expenses incurred by the appellant for extra nourishment, attendant charges and loss of future earnings.

7. It is further contended by the learned counsel for the appellant that the appellant has suffered 40%disability and there is evidence of PW.2-Doctor and also medical record to substantiate the same, that while dealing with the award of compensation, the Tribunal has to grant substantial compensation and not a token amount and he relied upon the decisions of BIMALA DEVI & OTHERS v. HIMACHAL PRADESH ROAD TRANSOPRT CORPORATION & OTHERS¹ and R.D. HATTANGADI v. PEST CONTROL (INDIA) PVT. LTD²., and ultimately,

¹ (2009) (13) SC 513

² AIR 1995 SC 755

prayed to enhance the compensation to Rs.4,00,000/- as claimed by the appellant.

8. On the other hand, learned Standing Counsel for the respondent Nos.2 and 4-Insurance Companies, contended that the Tribunal has analysed the entire evidence on record and determined the compensation payable to the appellant on all heads and nothing is left over; that the Tribunal has granted just and reasonable compensation and there are no circumstances to enhance the compensation as contended by the appellant and ultimately, both the counsels prayed to dismiss the appeal with costs.

9. As per the evidence of PW.1 and the documents marked i.e. A-1 CC of FIR, A-2 CC of wound certificate, A-3 CC of charge sheet, the petitioner suffered grievous injury due to rash and negligent driving of both the vehicles. The said evidence and the documents are not rebutted and therefore, the Tribunal has rightly held on issue No.1 in favour of the appellant. Further, in the light of evidence on record, and relying on the recitals of Ex.B-2 the Tribunal has held that the crime vehicles are insured with respondents 2 and 4. There is no record to vary the same. While determining the rash and negligent driving on the part of both the vehicles, the Tribunal apportioned 60% of the compensation against the respondents 3 and 4 and 40% against the other respondents directing them to pay jointly and severally. and therefore, there is nothing to interfere with the same and hence, it is confirmed.

10. Now, the only point for determination is that whether the appellant is entitled for enhancement of compensation ?

11. There is clear evidence of PW.1 (appellant) that he suffered crush injuries to his right upper arm extending from right shoulder to the upper part of the right fore arm with the depth of 5 cm x 8 cm, that entire muscle was severed to the root including small nerves. Immediately after the accident, the

appellant was admitted in the Government Hospital, Pulivendula, there he took first aid and then he was shifted to Government Hospital, Kadapa by a Jeep and he was in-patient in the said hospital for three months. He took special room and stayed there during his treatment. Initially, three persons attended him and thereafter, two persons attended him. He was not in a position to attend his personal works also. Therefore, he utilized the services of attendants. On account of the injury, there was immense damage to his nerves and affected the functioning of right hand. The movements are totally restricted. It caused cosmetic disfiguration. He is unable to work with his right hand. He was earning Rs.75,000/- to 1,00,000/- per annum on agriculture and also by doing private business. Now he employed private persons for his agricultural operations. PW.2-Dr.C.Sanjeewaiah, deposed that PW.1 was admitted in the hospital on 15.09.2003 with crush injury to his right hand and multiple fractures, dead tissues were removed and he was treated till 26.09.2003 as inpatient, and thereafter he left the hospital on medical advice, and again got admitted in the said hospital on 27.09.2003 and was inpatient for more than one month. During that period, the appellant was in a private room by paying room rent, purchased medicines from outside. The appellant has suffered from disfigurement of right arm, there is discomfort and movements are restricted and he requires Rs.50,000/- for surgery in private hospitals. The appellant cannot do agricultural work. PW.2 stated that the disability suffered by the appellant is 40% permanent. Ex.X-1 case sheet corroborates with the evidence of PW.2. PW.2 reiterated what he has stated in the chief examination. Under these circumstances, there is nothing to speak that the appellant did not suffer crush injury and fracture.

12. The Tribunal has granted Rs.30,000/- for injuries. The appellant has also exhibited the injuries through photos. It also corroborates with the evidence of PWs.1 and 2. The award of Rs.30,000/- on this count appears to be

low and therefore, it is enhanced to Rs.50,000/- . The Tribunal has awarded Rs.10,000/- towards medical expenses. It is evident from the record that the appellant was in a private room for more than one month while undergoing treatment. Grant of Rs.10,000/- towards medical expenses is low and therefore, the same is enhanced to Rs.20,000/-. The Tribunal has granted Rs.20,000/- towards loss of pleasure in life, the same can be maintained. The Tribunal has awarded an amount of Rs.50,000/- stating that the use of hand of the appellant has become minimal. There was loss of grip, he cannot lift weights and he cannot attend the day to day work relating to agriculture. There is a specific evidence of the doctor with regard to continuous suffering of the appellant and the appellant has suffered 40% permanent physical disability. The certificate of disability is marked as Ex.A-7. It corroborates with the evidence of PWs.1 and 2. Admittedly, the appellant has not suffered permanent disability and it cannot be taken as 40% as deposed by PW.2. To ascertain the correct disability, the petitioner would have gone to the Medical Board and got assessed the same. On the basis of the evidence placed on record, it can be concluded that the petitioner has suffered 20% permanent disability, and therefore, there is 20% reduction in his future earnings. Taking all the facts and circumstances, the amount awarded under this count i.e. Rs.50,000/- is enhanced to Rs.1,00,000/-. The Tribunal has granted an amount of Rs.30,000/- to attend the cosmetic disfiguration i.e. for plastic surgery and the same is maintained. In all, the appellant-petitioner is entitled to a sum of Rs.2,25,000/- as compensation as against the amount of Rs.1,45,000/- awarded by the Tribunal.

13. So far as the rate of interest is concerned, the Tribunal granted interest at the rate of 7.5% per annum from the date of petition till deposit of the awarded amount into Court and the same rate of interest is maintained on the enhanced amount also from the date of petition till realization.

14. Accordingly, this appeal is allowed in part modifying the order dated 20.03.2007 passed by the Tribunal, enhancing the compensation from Rs.1,45,000/- to Rs.2,25,000/- with interest at the rate of 7.5% per annum from the date of petition till realisation. On deposit the awarded amount, the appellant-petitioner is permitted to withdraw the entire compensation and interest. The other terms of the order under challenge remain unchanged.

15. Miscellaneous Petitions pending, if any, shall stand closed. No order as to costs.

July 26, 2017
KTL

Dr. SHAMEEM AKTHER, J

