

THE HON'BLE MS. JUSTICE J. UMA DEVI

MACMA NOs. 1670 & 2061 OF 2005

COMMON JUDGMENT:

Since these appeals arise out of the order dated 28.1.2005 passed by the Motor Vehicle Accident Claims Tribunal-cum-XXI-Addl. Chief Judge-cum-Additional Metropolitan Sessions Judge for the trial of Communal Offence Cases-cum-VII-Addl. Metropolitan Sessions Judge, Red Hills, Nampally, Hyderabad in O.P.No. 1014 of 2001, they are taken up together, heard and disposed of by passing a common judgment.

The parties are hereinafter referred to as they are arrayed in O.P.No. 1014 of 2001 for the sake of convenience.

The respondents-Andhra Pradesh Road Transport Corporation in O.P.No. 1014 of 2001 filed MACMA No. 1670 of 2005 feeling aggrieved by the order of the Tribunal whereunder liability is fixed against them to pay compensation of Rs.2,61,400/- to the petitioner.

Dissatisfied with the amount of compensation awarded by the Tribunal, the petitioner in O.P.No. 1014 of 2001 filed MACMA No. 2061 of 2005 seeking enhancement of the compensation.

The facts of the case are briefly stated as under,

That on 22.4.2001 at about 2.30 P.M. while the petitioner was traveling on a scooter bearing No. AP 9 L 8527 from Kukatpally towards Sanathnagar, Hyderabad, when he reached Kukatpally bus depot, an RTC bus bearing No. AP 9 Z 139 came in his opposite direction in a rash and negligent manner with high speed and gave a hit to his scooter, and as a result of which, he sustained fracture of left knee, left femur and multiple

bleeding injuries to his feet, hands and right thigh. Soon after the accident, he was shifted to St. Theresa's hospital, Sanathnagar, Hyderabad where he underwent treatment for the fracture injuries he sustained in the accident. Police of Kukatpally police station registered a case in Cr.No. 344 of 2001 under Section 337 of IPC against the driver of RTC bus for causing the above mentioned accident due to his rash and negligent driving of the RTC bus.

The Tribunal, on appreciation of the oral evidence of P.W.1 and criminal case record viz., Exs.A1 and A2, copies of FIR and charge sheet and other documents pertaining to the receiving of injuries by the petitioner in the accident, held that the accident occurred due to the rash and negligent driving of the RTC bus bearing No. AP 9 Z 139 by its driver.

The contention of the respondents is that the Tribunal erred in holding that the accident took place due to the negligent driving of the RTC bus bearing No. AP 9 Z 139 by its driver. Their contention is that in the complaint given by the petitioner it is clearly mentioned that while he was proceeding towards Sanathnagar from Kukatpally on a scooter bearing No. AP 9 L 8527, when he reached near Kukatpalli bus depot, an auto which was proceeding ahead of him, took a right turn by applying sudden brakes, in the meantime an RTC bus bearing No. AP 9 Z 139 driven by its driver came in the opposite direction in a rash and negligent manner with high speed and hit the scooter, due to which the scooter was damaged and he sustained injuries. The accident occurred on account of application of sudden brakes by the auto driver which was proceeding

ahead of the petitioner and there was no negligence on the part of the driver of RTC bus. The learned Judge of the Tribunal, without proper appreciation of the above mentioned fact, which was clearly recited in the complaint given by the petitioner, made the driver of the RTC bus responsible for the accident.

Since this being the main contention raised by the respondents, this Court has thoroughly gone through the oral and documentary evidence available in the case record. The petitioner has relied upon Ex.A1-complaint given by him to prove the negligence on the part of the driver of RTC bus. The petitioner in the complaint has clearly made a mention that an RTC bus which came in his opposite direction from Moosapet in a rash and negligent manner with high speed, hit his scooter and such act of the driver of RTC bus resulted in the accident.

According to the respondents, an auto which was proceeding ahead of the scooter of the petitioner, took a right turn after suddenly applying brakes and was responsible for the accident. For establishing negligence on the part of auto driver, the respondents have examined the driver of the RTC bus. However in his evidence he has not denied the involvement of RTC bus in the accident. The undisputed fact is that a case in Cr.No. 344 of 2001 was registered against the driver of RTC bus for causing the accident and that no complaint of any nature was registered against the driver of auto and it was not even averred or stated in the complaint that the driver of the auto was responsible for the accident. Since the evidence of P.W.1 has inspired confidence of the Court about the occurrence of accident, this Court has no hesitation to uphold that the finding of the

Tribunal that the accident occurred due to the rash and negligent driving of the RTC bus by its driver, which resulted in injuries to the petitioner vis-à-vis damage to his scooter.

So far as the quantum of compensation awarded by the Tribunal, regarding which there is a rival claim between the parties is concerned, the petitioner's contention is that the Tribunal may have allowed the entire claim petition, instead of partly allowing it. His principal contention is that though there is a functional disability as per Ex.A8-disability certificate issued by Gandhi Hospital, the Tribunal has not awarded any compensation under the head of loss of enjoyment of life and permanent disability. The evidence of P.W.2 clearly establishing the fact that the petitioner may have to spend Rs.2,00,000/- to undergo future operation is totally discarded by the Tribunal and that compensation of Rs.50,000/- awarded by the Tribunal under the head of 'future medical expenditure' for the disability is very meager. The Tribunal, without proper appreciation of the oral and documentary evidence available in the case record, particularly Ex.A8-disability certificate issued by Gandhi Hospital, has not awarded any compensation under the head of 'loss of earnings' on account of disability. The contention of the petitioner is that the Tribunal, based on its self drawn presumptions, has awarded compensation of Rs.2,61,400/- which has no basis at all and it is speculative and imaginary.

I have gone through the award passed by the Tribunal. The Tribunal, on appreciation of Ex.A3-CC of MLC and Ex.A4-discharge summary issued by St. Theresa hospital and the evidence of P.W.2-Dr. R.

Mukundan, which clearly establishes that the petitioner received fracture injury to his left femur, fracture of left patella, multiple abrasions over both the feet and hands and other material available in the case record, which clearly indicate that he had undergone surgery for the fracture injuries sustained by him, has awarded compensation of Rs.20,000/- under the head of pain and suffering. Since it is evident from the material available in the case record that the scooter of the petitioner was damaged in the accident, the Tribunal awarded compensation of Rs.3,000/-. This Court also finds that the Tribunal has rightly awarded compensation of Rs.5,000/- under the head of transport to hospital charges. The Tribunal, taking into consideration of the evidence available in the case record, including the evidence given by the petitioner, and P.W.4, the Senior Personal Officer of ECIL where the petitioner was working as an employee, awarded compensation of Rs.86,400/- under the head of loss of earnings for 9 months during which period the petitioner was forced to remain on leave due to the fracture injuries he sustained in the accident. The Tribunal relied upon a decision of the High Court of Madras reported in *P.N. Palani vs Micro Plast Industries and another*¹ where it was held that,

“It is not in dispute that what the claimant had availed of was the privilege leave and at the time he retires from service he will not be in a position to encash the same. This would, therefore, entitle the claimant to be paid a salary for the five months period when he was treated in the hospital. It is not disputed that his salary during the five months

¹ 2001 ACJ 1007

period amounts to a sum of Rs. 32,750. The total thus comes to a sum of Rs. 86,750.”

The Tribunal also relied upon a decision of the High Court of Himachal Pradesh reported in *Himachal Road Transport Corporation and another vs Ganeshwar Sharma and another* ² wherein it was observed that,

“.....as a matter of fact, that the accident took place in April, 1990 and the claimant could join his duties only in January, 1991. He, thus, remained on leave for about eight months. He was drawing a salary of Rs. 4,000 per month and, therefore, allowed compensation of Rs. 32,000 as loss of income up to the date of trial. It is not disputed that leave was taken by the claimant per force because of the accident. The claimant could have taken this leave at his leisure and pleasure. He could have encashed this leave at the time of his retirement. He could also reserve this leave for any contingency. We need not emphasise that in the absence of the availability of earned leave, a Government servant has to take leave without pay. It, therefore, cannot be said that the claimant did not suffer any pecuniary loss in this respect. Pecuniary loss on account of the leave taken by the claimant is capable of exact calculations as arrived at by the learned Tribunal. We draw support for the view we have taken, from *Udairam v: Mohammad Usman* 1992 ACJ 431 (MP).”

Since there is evidence of P.W.4 to the effect that the petitioner was getting salary of Rs.9600/- per month and was on leave for a period

² 2001 ACJ 931

of 9 months, the Tribunal has rightly awarded Rs.86,400/- under the head of loss of earnings. The petitioner was allowed to continue in service after the accident, as such there was no loss of future earnings to him on account of his involvement in the accident.

The petitioner claimed compensation of Rs.1,75,000/- under the head of permanent partial disability. Though Ex.A7-disability certificate issued by medical expert shows that the petitioner is suffering from disability of 40%, as per Ex.A8-medical certificate issued by Gandhi Hospital, the petitioner is suffering from disability of 52%. Since it is stated by P.W.2 that the disability may reduce after performing of operation to P.W.1, the Tribunal has rightly not assessed the disability taking into consideration of conflicting disability certificates-Exs.A7 and A8 issued by P.W.2 and Gandhi Hospital where different opinions are given in respect of percentage of disability. However, upon consideration of the evidence given by PWs 1 and 2, the Tribunal has awarded total sum of Rs.1,00,000/- under the head of disability for future operation which the petitioner may have to undergo in future. Though the petitioner seems to have claimed based on the evidence of P.W.2, that he needs Rs.2,00,000/- for future operation etc, no documentary evidence is produced in that regard. It is left open to the petitioner to make a claim for reimbursement before his employer if he undergoes further surgery, as is advised to him.

On careful perusal of the entire order passed by the Tribunal, this Court has not noticed any factual or legal flaw in it to intervene in the

matter. However, in the opinion of the Court, the interest rate can be reduced to 7.5% per annum from 9% per annum.

In the result, the award passed by the Tribunal is hereby confirmed except the interest rate as indicated above.

MACMA No. 1670 of 2005 filed by the respondents in OP No. 1014 of 2001 is partly allowed reducing the rate of interest to 7.5% per annum from 9% per annum.

MACMA No. 2061 of 2005 filed by the petitioner in OP No. 1014 of 2001 is dismissed.

Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

Dt. 9.3.2017
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JUSTICE J. UMA DEVI