

THE HON'BLE SRI JUSTICE N.BALAYOGI

M.A.C.M.A. No.1623 of 2011

JUDGMENT :

The appellant/respondent aggrieved by the Award and Decree dated 21.2.2011 in O.P. No.1048 of 2008 on the file of MACT-cum-III Additional District Judge (IF.T.C.) at Nalgonda filed this appeal besides other grounds on the ground that the Tribunal erred in not considering contributory negligence on the part of the driver of scorpio bearing No.AP 28 AX 123. Further, the claim without adding the owner and driver of scorpio is bad for non-joinder of necessary parties. The amount awarded is excessive.

The brief claim of the respondent/claimant is that on 14.1.2008 while the petitioner along with her relatives travelling in scorpio bearing No.AP 28 AX 123 at about 6.30 AM and when reached outskirts of Vemulapally Village, APSRTC bus bearing No.AP 10 Z 3230 came at high speed in a rash and negligent manner and dashed the scorpio bearing No.AP 28 AX 123. As a result, the claimant sustained grievous injury and immediately she along with other injured was shifted to Government Area Hospital, Miriyalaguda.

By the date of the accident, she was 35 years old, hale and healthy and earning Rs.3,000/- per month as Tailor and contributing the

same to the family. Due to the accident, the claimant sustained permanent disability and still suffering physical pain and mental agony.

The Tribunal, having considered the pleas of both claimant and respondent settled the following issues for trial :

- i) Whether the claimant has sustained injuries due to the rash and negligent driving of APSRTC bus bearing No.AP 10 Z 3230 by its driver?
- ii) Whether the claimant is entitled for compensation, if so, what amount and from whom?
- iii) To what relief?

In support of the claim, P.Ws.1 and 2 are examined and Exs.A1 to A9 are got marked. No oral or documentary evidence is adduced on behalf of the respondent.

Now the point that arises for consideration is, “Whether the findings of the Tribunal are suffering from any legal infirmities warranting interference?”

The contention of the appellant is that the Tribunal erred in making the driver of the RTC bus liable for the negligence, though admittedly it is head on collision. The injured herself examined as P.W.1. Her evidence clinches the issue that on 14.1.2008 while she along with her relatives travelling in a scorpio bearing No.AP 28 AX 123 and when reached the outskirts of Vemulapally, the driver of the RTC bus bearing No.AP 10 Z 3230 came in a rash and negligent manner and dashed the scorpio bearing No.AP 28 AX 123.

Ex.A1 is the earliest report wherein the complainant specifically asserted that at about 6.30 AM on 14.1.2008 while P.W.1 and others were travelling in scorio bearing No.AP 28 AX 123 and when reached the outskirts of Vemulapally village near Eesukabavigudem X roads, the RTC bus bearing No.AP 10 Z 3230 came in opposite direction with high speed in a rash and negligent manner and dashed on the right side of the scorio bearing No.AP 28 AX 123.

The Investigation Officer, after through investigation, filed the charge-sheet – Ex.A2, who also found that the driver of the RTC bus bearing No.AP 10 Z 3230 came from Miriyalaguda side towards Nalgonda side in a rash and negligent manner with high speed and dashed scorio bearing No.AP 28 AX 123 on its right side in which P.W.1 was travelling. The accident was due to rash and negligent driving of the driver of the RTC bus.

Ex.A3 is the scene of offence panchanama along with sketch map wherein the mediators specifically mentioned that at the scene of offence they found scorio bearing No.AP 28 AX 123 on the left side of the road. They also found that the right side portion of the scorio bearing No.AP 28 AX 123, starting from the engine till end, was completely damaged.

The evidence of P.W.1 supported by Ex.A1 – earliest report and in Ex.A2 – charge-sheet and Ex.A3 – scene of offence panchanama along with sketch map consistently prove that the RTC bus bearing

No.AP 10 Z 3230 came in opposite direction and dashed on the right side of the scorpio bearing No.AP 28 AX 123 which is coming on left side. The mediators observed stationed scorpio bearing No.AP 28 AX 123 on the left side of the road with damage starting from the engine till end of the car which speaks volumes that the driver without any care or caution drove the bus and had he been observed the opposite coming scorpio carefully, he would have stopped the bus. The manner in which the accident occurred is proved by the oral evidence of P.W.1 and documentary evidence of Exs.A1 to A3.

To substantiate the plea of the appellant/respondent that there is contributory negligence on the part of the driver of the scorpio, it has not chosen to produce witness to rebut the oral evidence of P.W.1 and documentary evidence of Exs.A1 to A3. The driver and conductor of the bus are in the control of the appellant. It is not the case of the appellant that the conductor and driver of the offending vehicle are not available at present. The appellant simply took the plea of contributory negligence and did not choose to enter any evidence either oral or documentary to rebut the evidence of P.W.1 and Exs.A1 to A3. In the absence of any such rebuttal evidence, the finding of the Tribunal that the accident occurred due to rash and negligent driving of the driver of the RTC bus bearing No.AP 10 Z 3230 is legal, do not suffer from any legal infirmities warranting interference.

The further contention is the claim is bad for non-joinder of owner and driver of scorpio. In view of clear finding at issue No.1 and

the aforementioned findings by this Court that the accident was due to rash and negligent driving of the bus bearing No. AP 10 Z 3230, the owner and insurer of the scorio are not proper and necessary parties and the claim can be decided even in their absence.

The further contention is that the amount awarded is excessive. The claim of the injured is Rs.2,00,000/-, whereas the Tribunal awarded Rs.1,83,000/-. The consistent evidence of P.W.1 is that she sustained fracture of third rib, comminuted fracture of body of right scapula, infection of upper part of right lung and lower part of both lungs, gas in the right side of the chest, blood in the right side of the chest, fracture of right humerus, fracture of right zygoma with soft tissue injury right side of the face and multiple injuries all over the body.

The Doctor, who treated the injured, is examined as P.W.2 and his evidence is that on 14.1.2008, P.W.1 admitted in the hospital with fracture of shaft humerus right and fracture of right zygoma with soft tissue injury to the right side of face. On 16.1.2008, she underwent surgery of right humerus and D.C.P. plating for right humerus and soft tissue repair over the face was done. Ex.A4 is the medical certificate. Ex.A5 is the discharge summary and reports. Ex.A6 is the original discharge bill. Ex.A7 is bunch of medical bills. Ex.A8 is two outpatient cards along with laboratory report. Ex.A9 is bunch of x-ray films and C.T. scan films which were prescribed and taken by P.W.2.

The further evidence of P.W.2 is that the claimant required one more operation for removal of plates from the right humerus and she will not be able to do any heavy work with her right hand. Though P.W.2 was cross-examined at length, nothing was elicited to rebut the evidence of P.W.2.

The evidence of P.W.1 corroborated with P.W.2 and supported by Ex.A4 – medical certificate and Ex.A5 – discharge summary proved that the claimant sustained fracture of shaft humerus right; hemopneumothorax on the right side of the chest; communitated fracture of right scapula and fracture right zygoma with soft tissue injury to the right side of face. All injuries are grievous in nature.

Ex.A5 and Ex.A7 supported by the evidence of P.Ws.1 and 2 goes to suggest that on 14.1.2008 P.W.1 admitted in Kamineni Hospital, she was treated as inpatient for ten days and she spent Rs.88,802.00 as per Ex.A6 discharge bill and Rs.7,613.99 as per Ex.A7 medical bills towards treatment and medical expenses. The Tribunal, having considered both oral and documentary evidence of P.W.1 and Exs.A1 to A9, awarded Rs.45,000/- (Rs.15,000/- for each fracture injury) towards injuries and Rs.15,000/- towards shock, pain and suffering. The total amount covered by Exs.A6 and A7 is Rs.96,415.99 towards medical expenditure, besides that Rs.3,000/- is awarded towards extra nourishment, Rs.1,000/- towards transportation and Rs.2,000/- towards attendant charges. The tribunal also awarded Rs.15,000/- towards future surgery and treatment. The tribunal

awarded Rs.6,000/- towards loss of earnings for two months period. Thus, after rounding off, Rs.1,83,000/-, was granted by the Tribunal towards compensation.

The aforesaid amounts awarded by the Tribunal are just compensation. There is nothing to suggest any excessive awarding of compensation to the claimant.

The Tribunal also awarded interest @ 7.5 % per annum from the date of filing of petition till the date of realization and also permitted the claimant to withdraw Rs.50,000/-. The balance amount was ordered to be kept in FDR in any nationalized bank for a period of three years which is over by this time.

In the facts and circumstances discussed above and in view of the evidence of P.W.1 supported by Exs.A1 to A9 and in the absence of any rebuttal evidence, I am of the opinion that the findings of the Tribunal and amounts awarded under various heads totalling Rs.1,83,000/- are quite reasonable and do not suffer from any legal infirmities warranting interference.

In the result, the appeal is dismissed while confirming the Award and Decree dated 21.2.2011 in O.P. No.1048 of 2008 on the file of MACT-cum-III Additional District Judge (IF.T.C.) at Nalgonda.

Since the three years period for which the amount kept in deposit is over, the claimant is permitted to withdraw the entire amount.

The miscellaneous petitions pending, if any, in the appeal shall stand closed.

Advocate fee is fixed at Rs.2,000/-.

JUSTICE N.BALAYOGI

9th November, 2017.
skmr

