

THE HON' BLE SRI JUSTICE M. S. K. JAISWAL

M.A.C.M.A .No. 1318 of 2010

JUDGMENT:

This Appeal is filed by the Appellant - State Road Transport Corporation, challenging the order, dated 23.11.2009 in OP.No.430 of 2006 on the file of the Motor Vehicles Accidents Claims Tribunal-cum-V Additional District Judge, Vijayawada, awarding a sum of Rs.50,000/- as compensation for the injuries said to have been sustained by the 1st respondent/ claimant in the accident, involving a RTC bus bearing No.AP10Z8208 on 28.02.2006 at about 5.15 p.m and the motor cycle driven by the injured.

2. The 1st respondent/injured filed the above O.P., claiming a compensation of Rs.1,00,000/- against the Appellant-Corporation and also its driver/ 2nd respondent herein. The contention of the injured/ claimant is that on the date of accident, when he was proceeding on his Hero Honda motor cycle towards Mullapadu, the driver of the Corporation, driven the bus in a rash and negligent manner, and dashed against his motor cycle, due to which he fell down and sustained injuries. He further contended that he underwent treatment at Ortho Care Hospital at Vijayawada, and incurred an amount of Rs.30,000/- towards medical expenses. It is further submitted that he was in-patient in the said hospital about 25 days, during which a surgery was performed and an iron rod was inserted in his femur. Therefore, the injured claims Rs.1,00,000/- towards compensation for the injuries sustained by him due to the negligent driving of the driver of the bus owned by the appellant.

3. On behalf of the Appellant/ Corporation a counter was filed before the Tribunal denying the allegations of the claimant/ injured, and further contending that the accident was occurred only due to the negligence of the injured/ claimant, as he was driving his motor-cycle by talking over his mobile-phone, due to which he could not observe properly the bus, and dashed the right side back portion of the bus, fell down on the road and sustained injuries. Therefore, it is contended that the accident occurred due to the negligent driving of the injured, but not due to the negligent or rash driving of the bus-driver.

4. The Tribunal, vide orders dated 23.11.2009 granted a sum of Rs.50,000/- to the claimant holding that the accident occurred only due to the negligent driving of the driver of the RTC bus and directed the Appellant/ Corporation to pay the same by depositing the amount within three months from the date of the said order. Aggrieved by the same, the State Road Transport Corporation filed the present appeal.

5. The learned counsel appearing for the Appellant/ Corporation submits that it is a clear case where the injured himself came from behind the RTC bus and dashed against it resulting in falling himself on the road and sustained injuries. However, the Tribunal erred in holding that the driver of the RTC bus is responsible for the accident and awarded compensation.

6. On the other hand, the learned counsel appearing for the injured/ claimant submits that the contention of the Appellant is incorrect and absolutely no evidence was produced to prove that the

accident was occurred due to the negligence of the claimant. On the other hand, the claimant/injured produced sufficient oral and documentary evidence in support of his contention that the accident was occurred due to the rash and negligent driving of the driver of the bus owned by the Appellant/ Corporation.

7. According to the claimant/ 1st respondent-injured, he sustained injuries in the accident that took place on 28.02.2006. The fact that the accident took place on the date and place mentioned in the records is not controverted. However, what is contended by the Corporation is that the accident was not occurred due to the rash and negligent driving of its driver, but it was the injured himself, who is responsible for the accident. Except a bald averment in the counter to that effect, no iota of evidence is produced by the Corporation to show that the accident had not taken place in the manner spoken to by the injured/ PW-1 and that it was the injured himself, who came behind the bus and hit the bus. On the other hand, PW-1, the victim/injured consistently spoke about the manner in which the accident has taken place. Therefore, there is no evidence to disbelieve the contention of the injured/ claimant that the driver of the RTC bus is responsible for the accident. The tribunal has appreciated all the material aspects in a proper perspective and held that the Corporation is liable to pay the compensation.

8. With regard to the quantum of compensation, the injured has claimed a sum of Rs.1,00,000/- towards the injuries sustained by him in the accident. According to PW-1, he was admitted in the

hospital, where PW-2 (Doctor) has treated him and performed surgery during the course of which an iron rod was inserted in his leg due to the fracture. The evidence of PWs.1 and 2, coupled with a bunch of Medical Bills under Ex.A-3, three x-rays under Ex.A5; and Final Bill under Ex.A-6 clearly establishes the claim of the injured/ claimant. The tribunal has taken into consideration the same in proper perspective and awarded a sum of Rs.15,000/- towards injuries; Rs.10,000/- towards pain and suffering; Rs.10,000/- loss of amenities; Rs.10,000/- towards medical expenses; and Rs.5,000/- towards transportation and extra nourishment; in all awarded Rs.50,000/- towards compensation.

9. I see no reason to differ from the findings arrived at by the learned Tribunal, which is based on proper appreciation of oral and documentary evidence on record. Therefore, there are no merits in the appeal and the same is liable to be dismissed.

10. In the result the appeal is dismissed. No order as to costs. Consequently, the pending miscellaneous petitions, if any, shall stand closed.

M. S. K. JAISWAL, J

Date: 09.06.2017

Kv

THE HON' BLE SRI JUSTICE M. S. K. JAISWAL



M.A.C.M.A .No. 1318 of 2010

JUDGMENT

Dt. 09..06..2017