

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.2561 OF 2005

JUDGMENT:

1. This Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), is filed by the appellant-2nd respondent (A.P.S.R.T.C.), aggrieved by the order dated 22.12.2003, passed in M.V.O.P. No.1024 of 2002 by the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge at Khammam (for short, 'the Tribunal'), insofar as the quantum of compensation is concerned.

2. Heard the learned standing counsel for the appellant-A.P.S.R.T.C., learned counsel for the 1st respondent-petitioner and perused the record.

3. Learned standing counsel for the appellant-A.P.S.R.T.C would submit that the award passed by the Tribunal is contrary to law and facts of the case; there was negligence on the part of the driver of Tata Sumo bearing registration No.AP-37-N-116, by which the petitioner was travelling, who stopped the Sumo without signals near Aruna Hotel at Aitipamula of Nalgonda district; the petitioner ought to have made the owner and insurer of the Sumo as proper and necessary parties to tag the liability against them; the compensation of Rs.63,600/- granted by the Tribunal is highly excessive, exorbitant and ultimately prayed to allow the Appeal setting-aside the impugned award.

4. On the other hand, learned counsel for the 1st respondent-petitioner would contend that the Tribunal having analyzed the entire evidence on record rightly awarded the compensation of Rs.63,600/- which is just and reasonable; the driver of R.T.C. bus bearing No.AP-10-Z-8210 is solely responsible for occurrence of the accident as the bus dashed the

stationed Sumo and hence there are no justifiable circumstances to vary the award under appeal and ultimately prayed to dismiss the Appeal.

5. In view of the rival contentions put forth by both parties, the following points have come up for determination:

1. Whether award of compensation of Rs.63,600/- is excessive and exorbitant?
2. Whether the owner and insurer of Tata Sumo bearing No.AP-37-N-116 are proper and necessary parties?
3. Whether the Tribunal justified in allowing the claim petition against the appellant?
4. Whether the impugned award is sustainable?

6. **POINTS:** The 1st respondent-petitioner, to substantiate his claim examined himself as P.W.1 and got marked Exs.A-1 to A-16, deposed about the injuries suffered by him and the manner of occurrence of accident. Ex.A-1 is the certified copy of F.I.R. in Crime No.103 of 2001 of Kattangur police station, Ex.A-2 is the certified copy of charge sheet, Ex.A-3 is the certified copy of medical certificate, Ex.A-4 is diagnosis report, Ex.A-5 is bunch of prescriptions, Ex.A-6 is bunch of medical bills, Ex.A-7 is Xerox copy of S.S.C. certificate, Ex.A-8 is Xerox copy certificate of participation in Karate, Ex.A-9 is Xerox copy of merit certificate, Ex.A-10 is district sports authority certificate, Ex.A-11 is participation of merit certificate in karate, Ex.A-12 is Xerox copy of rank certificate in Karate, Ex.A-13 is Xerox copy of rank certificate, Ex.A-14 is photos(4), Ex.A-15 is photo of petitioner showing injury and Ex.A-16 is bunch of x-rays. As per the evidence on record, the Sumo by which the petitioner was traveling was stationed near Aruna Hotel at Aitipamula of Nalgonda district at around 03:00 a.m., the driver of R.T.C. bus drove the same in a rash and

negligent manner and dashed the Sumo; due to which, the 1st respondent-petitioner suffered fracture on his right leg, thigh and other parts of the body, which is borne by the criminal case record and also the medical evidence adduced by the petitioner. There is no mention of rashness and negligence on the part of the driver of Sumo anywhere in the evidence. Moreover, the appellant (A.P.S.R.T.C) did not choose to examine the driver of R.T.C. bus, who drove the bus at the time of accident. There is no iota of evidence adduced on behalf of the appellant to substantiate this contention. The entire record shows only rashness and negligence on the part of driver of R.T.C. bus. Therefore, the Tribunal rightly held that the accident occurred due to the rash and negligent driving of the driver of R.T.C. bus.

7. As far as grant of compensation is concerned, there is record to show that the petitioner was good in karate; there were number of certificates to prove the same. There is also record to show that the petitioner suffered grievous and simple injuries and took treatment for the injuries. Prior to the accident, the petitioner was working as Salesman, earning Rs.5,000/- p.m. So, it cannot be said that the petitioner was not an earning member. In view of the age of the petitioner and other evidence on record, it can be safely concluded that the petitioner was an earning member, suffered considerable loss on account of the injuries suffered by him in the accident. The Tribunal after examining the entire evidence and documents, rightly granted a compensation of Rs.15,000/- for the injuries, Rs.4,500/- towards pain, suffering and mental agony, Rs.19,600/- towards medical expenses, Rs.4,500/- towards extra nourishment, transportation and attendant charges and Rs.20,000/- towards past earnings for 4 months at the rate of Rs.5,000/- p.m.; in all granted a compensation of Rs.63,600/- with interest at the rate of 9% p.a. from the date of petition till

the date of realization; findings are based on evidence and record. There are instances where the Apex Court and this Court awarded interest at the rate of 9% p.a. in some cases. All the submissions put forth on behalf of the appellant (A.P.S.R.T.C) do not merit consideration and the Appeal is liable to be dismissed.

8. In the result, the Appeal is dismissed confirming the order dated 22.12.2003, passed in M.V.O.P. No.1024 of 2002 by the Tribunal.

9. As a sequel, pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

Date: 24.10.2017.
Dsh

Dr. SHAMEEM AKTHER, J



HON'BLE Dr. JUSTICE SHAMEEM AKTHER

119



25102017

M.A.C.M.A. No.2561 OF 2005

Date. 24.10.2017

DSH