

THE HON'BLE MR JUSTICE N.BALAYOGI

M.A.C.M.A. No.5033 of 2008

JUDGMENT:

The appellant – respondent No.2 aggrieved by the Award and Decree dated 31.7.2006 in O.P.No.881 of 2004 on the file of the Motor Accidents Claims Tribunal (District Judge) Karimnagar, preferred this appeal contending that the Tribunal ought to have held that there is no negligence on the part of the driver of the R.T.C. bus. The Tribunal also erred in assessing the monthly income of the claimant at Rs.3,000/- and that there is no loss of income to the claimant. Further, the Tribunal erred in granting compensation amount under the head medical treatment and attendant charges at Rs.23,076/- and Rs.5,000/- respectively and erred in awarding compensation of Rs.2,28,976/- in all.

2. The case in brief is as follows :

On 29.10.2003, the claimant boarded the bus bearing No.AP 10 Z 9867 and at about 9.40 PM when it reached in front of Keshava Gurukula High School in the outskirts of Keshavapatnam, the driver drove the bus in a rash and negligent manner in a sleepy mood with high speed and lost control over the bus and hit a road side tree on its right side, as a result, the petitioner sustained severe grievous injuries. Immediately, he was shifted to Government Hospital, Karimnagar, therefrom to MGM Hospital, Warangal, where he took treatment as

inpatient from 30.10.2003 to 11.2.2004. He was on bed rest for eight months. He has to undergo another operation for removal of steel rods which costs Rs.15,000/-. He incurred Rs.60,000/- towards treatment and medicines and Rs.10,000/- towards ambulance and rented vehicles and Rs.15,000/- towards attendant charges. The claimant was carrying on business in handloom cloth wholesale and retail and used to earn Rs.10,000/- per month. He could not move without assistance of others.

3. The second respondent - appellant filed counter contending that on 29.10.2003 at 9.40 PM, when the bus reached in front of Keshavagurukula High School, suddenly a scooter came in a opposite direction and then the driver of the RTC bus, to avoid the scooter, swerved the bus towards right side. Accordingly, the accident was not due to fault of RTC Bus driver.

4. The Tribunal having considered the plea of both parties, settled the following issues for trial :

1. Whether the accident took place due to rash and negligent driving of the vehicle i.e., APSRTC bus bearing No.AP 10 Z 9867 by its driver?
2. Whether the petitioner is entitled to compensation, if so, to what amount and from whom?
3. To what relief?

5. In support of petitioner's contention, P.Ws.1 and 2 were examined and Exs.A1 to A13 were marked. No evidence, either oral or documentary, was adduced on behalf of respondents.

6. The contention of the appellant is that there is no negligence on the part of the driver of the RTC Bus, whereas the claimant's contention is that the accident is due to rash and negligent driving of the driver of the RTC Bus.

7. To substantiate the rash and negligence, the claimant examined himself as P.W.1 and filed Ex.A1 – copy of First Information Report, Ex.A2 – copy of the charge-sheet, Ex.A3 – copy of M.V.I. Report, Ex.A5 – copy of Form No.54.

8. The evidence of P.W.1 is that on 29.10.2003, while he was traveling in the RTC Bus bearing No.AP 10 Z 9867, at about 9.40 PM, when bus reached in front of Keshava Gurukula High School in the outskirts of Keshavapatnam, the driver of the bus drove it in a rash and negligent manner in a sleepy condition with high speed, as a result he lost the control and the bus went off road on its right side and dashed the road side tree. Ex.A1 is the F.I.R. and Ex.A2 is the Charge-sheet, wherein there is a clear assertion that when the bus reached in front of Keshava Gurukula High School in the outskirts of Keshavapatnam, the driver drove the bus in a sleepy mood with high speed in a rash and negligent manner, lost the control and the bus went off the road and on its right side dashed to a tree. The Investigating Officer under Ex.A2 – charge-sheet, after thorough investigation, found that the driver, who is the 1st respondent therein, drove the bus in a rash and negligent manner in a sleepy position, as a result, the bus went off the road on its right side, dashed to a road side tree, due to which, the passengers in the bus

sustained simple and grievous injuries. The MVI in Ex.A3 clearly mentioned against column No.9 with regard to cause of failure of breaks that the bus could not able to take out for road test due to damage of front axle beam and track pipeline systems and ultimately found that the accident occurred not due to any mechanical defects of the vehicle.

9. The evidence of P.W.1 read with Exs.A1 to A3 goes to suggest that the driver of the RTC bus bearing No.AP 10 Z 9867 drove the bus with high speed in a sleepy mood in a rash and negligent manner, lost control, as a result, the bus went off the road on its right side and hit to a tree on the road side. The best piece of evidence in such a case is the other passengers in the bus, who are the driver and conductor of the bus. The driver is cited as 1st respondent, who, having received the summons, was set ex parte. The driver and conductor are under the control of the 2nd respondent – appellant. For the best reasons known to the 2nd respondent, they were not examined. Even it is not the case of the 2nd respondent that the driver and conductor are not available to examine. In such circumstances, the Tribunal, having marshalling the facts and elaborate discussion, both oral and documentary evidence, came to the right conclusion that in the absence of any rebuttal evidence, the evidence of P.W.1 supported by Exs.A1 to A3 will establish that accident was occurred due to rash and negligent driving of the driver of the RTC bus, which is legal, valid and do not suffer from any legal infirmities.

10. With regard to the amounts awarded and income of the injured-claimant, the contention of the appellant is that the Tribunal erred in such matters. The consistent evidence of P.W.1 is that immediately after the accident, he was shifted to Government Hospital, Karimnagar and after first aid, he was referred to MGM Hospital, Warangal, where he was admitted as in-patient on 30.10.2003 in emergency ward. Due to his health condition, Doctors could not able to perform the surgery immediately and finally on 24.1.2004, he underwent operation to his right femur and steel rods were inserted. He was kept under observation for a long period and ultimately, discharged on 11.2.2004 with an application of POP to his right leg with an advice to take complete bed rest for eight months and to have periodical checkup for further treatment, accordingly he took treatment for a considerable period and for which he incurred an amount of Rs.10,000/- towards transportation and that he has also engaged an attendant to serve him during the period of his treatment and during his rest period by paying him huge amounts towards his salary.

11. P.W.2 is the Doctor who treated P.W.1 in MGM Hospital, Warangal. His evidence is that P.W.1 admitted in the Hospital on 30.10.2003 in emergency ward and discharged on 11.2.2004 with advice to come after two months and take rest till 29.9.2004. Ex.A4 is the Medical Certificate issued by the Government District Headquarters Hospital, Karimnagar, wherein injuries are specifically mentioned. Ex.A6 is the discharge summary issued to P.W.1.

12. The evidence of P.W.1 read with the evidence of P.W.2 and documentary evidence under Exs.A4 and A6 goes to suggest that P.W.1 sustained the following injuries :

1. Grade III Compound fracture of right femur comminuted.
2. Comminuted fracture patella.
3. Grade III compound fracture right leg (both bones) comminuted with diabetes mellitus.
4. Sutured wound over the fronto parietal region.
5. Sutured wounds over the left and right cheek of 5 cm each
6. Closed head injury.

P.W.1 was admitted in MGM Hospital, Warangal, on 30.10.2003 with I.P. No.32747 and discharged on 11.2.2004. The above injuries are clearly mentioned under Ex.A6. The injuries noted in Exs.A4 and A6 are grievous in nature.

13. Further, the evidence of P.W.2 established that P.W.1 underwent surgery for intramedullary nail of right femur which is still in the body and needs extraction in the later date for which P.W.1 has to be hospitalized for two to three weeks. It is also the medical evidence of P.W.2-Doctor that P.W.1 developed shortening of right lower limb with ankylosis right knee and also ankylosis of right ankle which resulted in permanent disability of 60%. As a result, P.W.1 developed two inches shortening of right lower limb and he may not be able to perform his daily duties. The only suggestion to P.W.2 is that P.W.1 suffered only minor injuries, but not suffered 60% disability.

14. The Tribunal, having considered the oral and corroborative evidence of P.Ws.1 and 2 and documentary evidence under Exs.A4 and

A6 and x.ray films under Ex.A13, Ex.A7 – disability certificate and marshaling the facts in issue, though under Ex.A7 the disability is mentioned as 60%, the Tribunal having considered the evidence of P.W.2 that there is shortening of two inches of the right leg and having found that P.W.1 is carrying on cloth business in wholesale and retail, held that P.W.1 could carry out his business even by sitting in his shop without moving outside, though he may not be able to do as efficiently as before he could and assessed the loss of earning capacity at 40%. In the absence of any consistent evidence about income, the Tribunal rightly assessed the income of P.W.1 at Rs.3,000/- per month. As the petitioner was aged about 43 years, applied the multiplier '11' and awarded an amount of Rs.1,58,400/- towards loss of earnings due to permanent disability. Since the claimant is confined to bed for 3 ½ months and thereafter he has to take rest for at least two months, the Tribunal rightly awarded Rs.15,000/- towards loss of past earnings. The Tribunal awarded Rs.2,500/- towards transport charges. The Tribunal also considered Exs.A6 to A8, A10 and A13 read with the evidence of P.Ws.1 and 2 and awarded Rs.23,076/- towards cost of medicines, treatment, rent and ambulance charges. The Tribunal also awarded Rs.5,000/- towards attendant charges which is on lower side and the Tribunal further awarded Rs.25,000/- towards pain and suffering. Having considered the nature of injuries and the treatment in the Hospital for nearly 3 ½ months, the amounts granted are on lower side and do not warrant any interference.

15. The Tribunal having elaborate discussion, both oral and documentary evidence, came to the right conclusions. I am of the considered view that the findings of the trial Court and awarding of compensation, particularly assessing the monthly income of the claimant at Rs.3,000/- and the amounts awarded therein are quite just, reasonable, fair and do not suffer from any legal infirmities warranting interference from this Court.

16. In the result, the appeal is dismissed while confirming the award and decree dated 31.7.2006 passed in O.P.No.881 of 2004 on the file of the Motor Accidents Claims Tribunal (District Court) at Karimnagar, with costs through out. The appellant is directed to deposit the compensation amount, if not already deposited, within six weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the same.

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

18. Miscellaneous petitions pending, if any, in this appeal shall stand closed.

JUSTICE N.BALAYOGI

August, 2017.

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