

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No. 172 OF 2006

JUDGMENT:

1. This Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), is filed by the appellant, who is the petitioner in O.P. No.2142 of 2000, on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional Chief Judge, City Civil Court, Hyderabad (for short, 'the Tribunal'), having got dissatisfied with the awarding compensation of Rs.1,75,000/-, payable by the 3rd respondent, against the original claim of Rs.5,35,000/-, with interest at 9% per annum from the date of petition till realisation, *vide* the order of the Tribunal dated 19.04.2005, for the injuries sustained by her in a motor accident occurred on 12.07.1999.

2. The case of the appellant, in brief, is that on 12.07.1999 at about 02-30 a.m., when the appellant-petitioner, her father-Vasantha Kumar and family friend-S.N. Chandrasekhar, sisters-Sriharshini and Sailaja, were returning from Guntur to Hyderabad by the Ambassador Car bearing registration No.AP 9R 1141, the said car met with an accident due to collision with Andhra Pradesh State Road Transport Corporation (A.P.S.R.T.C.) Bus bearing registration No.AP 10Z 987, belonging to 3rd respondent, which came in its opposite direction; as a result of which, the petitioner sustained grievous head injury, diffuse axonal injury and RTA Oedema, and, thereafter, she was in coma for 25 days. She was treated in M/s. Nagarjuna Hospitals Limited, Kanuru, Vijayawada from 12.07.1999 to 18.07.1999 and, thereafter, in M/s. Medwin Hospital, Hyderabad from 19.07.1999 to 23.08.1999 as inpatient. Therefore, she claimed compensation of Rs.5,35,000/- from the respondent Nos.1 and 2, who are

owner and insurer of ambassador car, and respondent No.3, who is A.P.S.R.T.C., respectively.

3. Respondent No.1-owner of the ambassador car remained *ex parte*.

4. Respondent No.2-insurer of the ambassador car filed counter contending that the petitioner has not furnished the policy particulars of the ambassador car and the accident occurred due to the negligent driving of the driver of the R.T.C. bus and the R.T.C. owner alone has to pay the entire amount of compensation to the petitioner.

5. Respondent No.3-A.P.S.R.T.C. filed counter denying all the allegations made in the petition and contended that the driver of the car drove it in a rash and negligent manner and caused the accident and the R.T.C. bus was slowly proceeding in its way on left side of the road, but the car driver while overtaking a lorry passing in front of him, collided with the bus and caused the accident. It is further contended that the amount of compensation claimed is highly excessive, exorbitant and speculative.

6. The Tribunal after considering the evidence of P.Ws.1 and 2 and R.W.1 and the documents Exs.A.1 to A.12, awarded compensation of Rs.1,75,000/- (*i.e.*, Rs.75,000/- towards fractures, Rs.30,000/- towards pain and suffering and extra nourishment, Rs.25,000/- towards loss of amenities in life, Rs.25,000/- towards future loss of dependency and Rs.20,000/- towards medical attendant allowance) with interest at 9% per annum from the date of petition till realisation, fixed liability only on respondent No.3-A.P.S.R.T.C.

7. Heard the arguments of learned counsel for the appellant-petitioner and the learned Standing Counsel for respondent No.2-insurer of the car but none appeared for respondent No.3-A.P.S.R.T.C, in spite of service of notice.

8. The appeal against respondent No.1-owner of car is dismissed for default on 20.04.2016. However, absence of 1st respondent-owner of the car is of no consequence to decide the quantum of compensation in this appeal, in view of a Division Bench of this Court in ***Meka Chakra Rao Vs. Yelubandi Babu Rao @ Reddemma and others***¹, wherein it is held as follows:

"If the Claims Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged either by the Insurance Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore there cannot be any bar to decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle to the extent of the statutory liability of the Insurance Company. But the quantum of compensation cannot be decided over and above the statutory liability of the Insurance Company in the absence of the owners, but the question of the statutory liability of the Insurance Company survives for consideration at the appellate stage."

9. Learned counsel for the appellant-petitioner submits that the petitioner had suffered grievous injuries, her left side body was paralyzed and she was under treatment for several months. Still she is continuing her treatment. Due to her major head injury, she lost her memory; she was in coma for about one month. Now, she is in-capable of identifying the people and negotiating with them, she is represented by her next friend i.e., her sister, during the pendency of the petition as well as before this Court in Appeal. Learned counsel further submits that the Tribunal has not taken the above facts into consideration and granted a meagre compensation and prayed to enhance the compensation and further

¹ 2001(1) ALT 495 (D.B.)

submits that the Tribunal had rightly held that the accident occurred only due to the rash and negligent driving of the R.T.C. Bus and as such the Tribunal has analyzed the entire evidence and rightly concluded tagging the liability against the R.T.C. Bus, there is nothing to interfere in that regard and ultimately prayed to enhance the compensation as prayed for.

10. On the other hand, learned standing counsel appearing for the 2nd respondent-insurer of car contended that the Tribunal has rightly decided all the aspects with regard to award of compensation; there was no negligence on the part of the driver of car. The Tribunal rightly disbelieved the evidence of R.W.1, driver of R.T.C. bus, and as such held that the driver of R.T.C. bus was responsible for the occurrence of the accident and injuries to the petitioner. In these circumstances, the Tribunal did not grant any compensation against the 1st and 2nd respondents, owner and insurer of the Car, and prayed for dismissal of the Appeal.

11. In spite of service of notice on the 3rd respondent-A.P.S.R.T.C., long back, none entered appearance even though the name of Mr. A. Ravi Babu, learned standing counsel for 3rd respondent-A.P.S.R.T.C. is published in the cause list.

12. In view of the contentions put forth by both the counsel, the following points have come up for determination:

1. Whether the driver of R.T.C. bus bearing No.AP 10Z 987 is alone responsible for occurrence of the accident?
2. Whether the appellant-petitioner is entitled for enhancement of compensation, as prayed for?
3. Whether the order under Appeal is liable to be set-aside?

13. **POINT No.1:** On the submission that the petitioner suffered major head injury and lost her memory power, the petitioner got amended the petition *vide* order in I.A. No.2230 of 2004, dated 22.09.2004 and, thereafter, she is being represented by her next friend i.e., her younger sister, who was examined as P.W.1. Her evidence reveals that on 11.07.1999 *i.e.*, on the intervening night of 11/12 July, herself, her elder sister and younger sister, her father and his friend were returning to Hyderabad from Guntur by the Ambassador car bearing No.AP 9R 1141, belonging to the 1st respondent, at about 02:30 a.m. when the car reached near Srinivasnagar, Barkatgudem village of Nalgonda District, the R.T.C. bus came in their opposite direction and caused the accident. On account of the accident, she sustained fracture, her father and her father's friend by name Chandrasekhar, car driver and her younger sister by name Sailaja succumbed to the injuries. Her evidence further reveals that her elder sister *i.e.*, the appellant-petitioner, suffered injuries along with her (P.W.1). She deposed in her evidence that she could not say which driver of the vehicle was at fault. Her evidence further reveals that soon after the accident, the petitioner was shifted to Nagarjuna Hospital, Vijayawada. She asserted that immediately after the accident she lost her consciousness and regained the same one week thereafter. She further stated that the petitioner suffered major head injury and lost her memory and her entire left side of the body is paralyzed and the petitioner was in coma for one month. Exs.A-1 to A-7 were marked through her. Her evidence further reveals that the petitioner sustained damage to fore teeth and her memory power was completely damaged, which is evident from Exs.A-9, certificate issued by a doctor, and A-10, certificate issued by Professor K. Satyanarayana.

14. To substantiate the stand taken by the A.P.S.R.T.C., the driver of the R.T.C. bus was examined as R.W.1, who clearly and categorically deposed that the driver of car was rash and negligent and caused the accident resulting in the instantaneous death of several persons, including major injuries to the petitioner. He also stated that he drove the R.T.C. bus carefully and cautiously and had taken the bus to the extent left side of the road, however, could not avert the accident. The Tribunal while analysing the entire documentary and oral evidence held that the bus being a heavy vehicle, its driver could have driven the bus more cautiously and could have averted the accident. The evidence of R.W.1 is contemporaneous that R.T.C. bus driver had not tried to avoid the accident by stopping the bus, being a heavy motor vehicle. The Tribunal tagged the responsibility of causing the accident only against the driver of R.T.C. bus belonging to 3rd respondent. Admittedly, the petitioner and her family members travelled by the car, which is a small vehicle, and R.T.C. bus is a heavy vehicle. Though, R.W.1 stated that he has seen the car coming in high speed, he could not stop the bus. Left side tyres of the bus were on the road side margin which itself indicate that the bus did not got down from the road and the driver did not stop the bus. Had the driver of the bus drove the bus very slowly and cautiously, as deposed by him, he would have stopped the bus or completely got down from the road and averted the accident. The Tribunal had not analyzed the evidence in proper perspective and held that the R.T.C. driver is only responsible for occurrence of the accident; the finding is not based on record. Ex.A-1 is the certified copy of F.I.R. which was issued against the driver of the car; the de-facto complainant is not an eye witness to the occurrence of the accident. In the facts and circumstances of the case, it can be safely concluded that the driver of the car bearing No.AP 9R 1141 and the driver of R.T.C. bus belonging to the 3rd respondent are equally responsible for occurrence of

the accident, which resulted in death of several passengers and injuries to the petitioner. Accordingly, the point is answered.

15. **POINT Nos.2 and 3:** As per the evidence on record, the petitioner suffered major head injury. The evidence of P.W.2, doctor, is that she treated the petitioner, who was referred to him by Dr. Krishnaiah. According to P.W.2, the petitioner suffered head injury with diffuse axonal degeneration resulting in left spastic hemi paresis. Further, the petitioner suffered fracture on left humerus and left clavicle and as such she underwent intense physiotherapy from December, 1999 to March, 2000 and she requires further physiotherapy for residual motor deficit in left lower limb. The petitioner was produced before the Tribunal through P.W.1 on 19.01.2004 and when the Tribunal put questions about the name of petitioner and the persons who are standing on her either side, the petitioner did not reply and stated that she did not know. The persons standing on either side of the petitioner were her sisters. Except stating that she does not know, she was not in a position to understand the questions. As per Ex.A-8, the petitioner requires further physiotherapy. When the petitioner failed to answer the questions put by the Tribunal, the Tribunal came to the conclusion that the petitioner lost her memory power. Ex.A-10 is the medical certificate issued by Dr. K. Satyanarayana, who is a neuro surgeon, wherein he stated that the petitioner suffered major head injury, fracture of mandible, fracture of left humerus, fracture of left clavicle, C-diffuse axonal injury, left spastic hemi paresis, loss of hearing on left side with diminished memory and dysphasia and giddiness. Further, as per Ex.A-10, the petitioner suffered three injuries on her vital parts of the body and taking into consideration the above factors, the Tribunal had granted Rs.75,000/- for three fracture injuries at the rate of Rs.25,000/- for each injury. A sum of Rs.30,000/- was granted towards

pain and suffering and extra nourishment. As per Ex.A-12, it is evident that the petitioner completed M.Com., from Osmania University in April, 1998. As per the evidence of P.W.1, the petitioner is residing separately from her husband, as she was deserted on the ground of loss of memory power, which establishes that the petitioner lost amenities in her life and cannot lead conjugal life anymore. On this score, the Tribunal had granted Rs.25,000/- towards loss of amenities in life; Rs.25,000/- towards future loss of dependency and a sum of Rs.20,000/- towards attendant charges, as for her rest of life, she became a dependant on others. In all, the petitioner was granted a compensation of Rs.1,75,000/- against her claim of Rs.5,35,000/-. There is clear evidence of P.Ws.1 and 2 with regard to the injuries suffered by the petitioner and also treatment taken by her and the present condition of her memory. There is record to establish that the petitioner had lost her memory, lost family life as her husband deserted her, and she has become a permanent dependant on others and even there was no hope of her leading normal life as earlier. In view of the injuries suffered by the petitioner and taking into consideration her pathetic condition, the compensation awarded by the Tribunal is meagre.

16. Learned counsel for the appellant-petitioner relied on a decision of the Apex Court in **Pawan Kumar and another Vs. Harkishan Dass Mohan Lal and others**², to contend that the appellants are entitled for compensation against one of the tort feasons, wherein it was held as follows in Para 9:

“9. Paras 6 and 7 of *T.O. Anthony*² which are relevant may be extracted herein below:

“6. ‘Composite negligence’ refers to the negligence on the part of two or more persons:

² 2014 (3) SCC 590

where a person is injured as a result of negligence on the part of two or more wrongdoers, it is said that the person was injured on account of the composite negligence of those wrongdoers. In such a case, each wrongdoer is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrongdoer separately. On the other hand, where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence on the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stand reduced in proportion to his contributory negligence.”

17. It is evident from the record that the petitioner had not even remotely contributed for the occurrence of the accident resulting grievous injuries and the disability caused to her. The aforesaid decision is aptly applicable to the case on hand.

18. Learned counsel for the appellant-petitioner had relied on another decision of the Apex Court reported in ***Uttar Pradesh State Road Transport Corporation Vs. Mamta and others***³, wherein it was held as follows:

“14. As far back in 1969, the learned Judge – V.R. Krishna Iyer, J (as His Lordship then was the judge of Kerala High Court) while

³ 2016 (4) SCC 172

deciding the first appeal under Section 96 of the C.P.C. in [Kurian Chacko Vs. Varkey Ouseph](#) (AIR 1969 Kerala 316), reminded the first appellate court of its duty to decide the first appeal. In his distinctive style of writing with subtle power of expression, the learned judge held as under:

“1. The plaintiff, unsuccessful in two Courts, has come up here aggrieved by the dismissal of his suit which was one for declaration of title and recovery of possession. The defendant disputed the plaintiff's title to the property as also his possession and claimed both in himself. The learned Munsif, who tried the suit, recorded findings against the plaintiff both on title and possession. But, in appeal, the learned Subordinate Judge disposed of the whole matter glibly and briefly, in a few sentences.

2. An appellate court is the final Court of fact ordinarily and therefore a litigant is entitled to a full and fair and independent consideration of the evidence at the appellate stage. Anything less than this is unjust to him and I have no doubt that in the present case the learned Subordinate Judge has fallen far short of what is expected of him as an appellate Court. Although there is furious contest between the counsel for the appellant and for the respondent, they appear to agree with me in this observation.” (Emphasis supplied)

16. In [Santosh Hazari Vs. Purushottam Tiwari \(Deceased\)](#) by L.Rs. (2001) 3 SCC 179) this Court held as under (Pages 188-189):

“15. The appellate court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put

forth, and pressed by the parties for decision of the appellate court while reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it.”

The above view was followed by a three-Judge Bench decision of this Court in [Madhukar and Others Vs. Sangram and others](#) (2001 (4) SCC 756), wherein it was reiterated that sitting as a court of first appeal, it is the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings.

17. In H.K.N. Swami Vs. Irshad Basith (2005 (10) SCC 243), this Court stated as under (Page 244, Para 3):

“3. The first appeal has to be decided on facts as well as on law. In the first appeal parties have the right to be heard both on questions of law as also on facts and the first appellate court is required to address itself to all issues and decide the case by giving reasons. Unfortunately, the High Court, in the present case has not recorded any finding either on facts or on law. Sitting as the first appellate court it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording the finding regarding title.”

18. Again in [B.V Nagesh & Another vs. H.V. Sreenivasa Murthy](#) (2010 (13) SCC 530), this Court taking note of all the earlier judgments of this court reiterated the aforementioned principle with these words:

“3. How the regular first appeal is to be disposed of by the appellate court/High Court has been considered by this Court in various decisions. Order 41 CPC deals with appeals from original decrees. Among the various rules, Rule 31 mandates that the judgment of the appellate court shall state:

(a) the points for determination;

(b) the decision thereon;

(c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

4. The appellate court has jurisdiction to reverse or affirm the findings of the trial court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. Sitting as a court of first appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. (Vide [Santosh Hazari v. Purushottam Tiwari](#), (2001 (3) SCC 179 at Page 188, Para 15 and [Madhukar Vs. Sangram](#), (2001 (4) SCC 756 at Page 758, Para 5)

5. In view of the above salutary principles, on going through the impugned judgment, we feel that the High Court has failed to discharge the obligation placed on it as a first appellate court. In our view, the judgment under appeal is cryptic and none of the relevant aspects have even been noticed. The appeal has been decided in an unsatisfactory manner. Our careful perusal of the judgment in the regular first appeal shows that it falls short of considerations which are expected

from the court of first appeal. Accordingly, without going into the merits of the claim of both parties, we set aside the impugned judgment and decree of the High Court and remand the regular first appeal to the High Court for its fresh disposal in accordance with law.”

21. An appeal under [Section 173](#) of the M.V. Act is essentially in the nature of first appeal alike Section 96 of the Code and, therefore, the High Court is equally under legal obligation to decide all issues arising in the case both on facts and law after appreciating the entire evidence. [See [National Insurance Company Limited Vs. Naresh Kumar and others](#) (2000 (10) SCC 198) and [State of Punjab & another Vs. Navdeep Kaur and others](#) (2004 (13) SCC 680).”

19. In the light of the decisions referred above, the appellate Court must reflect its conscious application of mind and record findings supported by reasons, on all issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate Court. Sitting as a court of first appeal, it is the duty of this Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings.

20. All contentions and issues emerged from the submissions made by both sides are open for determination on question of fact and law. While dealing with the claim petition, the Tribunal has tagged the liability against the R.T.C. only. It is evident from the record that the Ambassador Car bearing No. AP 9R 1141 was insured with the 2nd respondent-insurer, as per Ex.B-1 insurance policy. As per Ex.B-1 - copy of insurance policy, available in the record, there are no violations in the terms and conditions

of policy. The Tribunal erred in tagging the liability against the 3rd respondent - R.T.C. and absolved the 2nd respondent-insurer from its liability. In the facts and circumstances of the case, 1st and 2nd respondents being owner and insurer of the Ambassador Car and 3rd respondent-R.T.C. are equally liable to pay compensation to the appellant-petitioner in the ratio of 50:50.

21. The following is the tabular form showing the amount of compensation awarded by the Tribunal and modified by this Court, if any, under each head:

Sl.No.	Name of Head	Awarded by Tribunal	Modified by this Court
01.	Three fractures and pain and suffering	Rs.75,000/-	Rs.1,50,000/-
02.	Loss of amenities in life	Rs.25,000/-	Rs.1,00,000/-
03.	Future loss of dependency	Rs.25,000/-	Rs.1,00,000/-
04.	Pain and suffering	Rs.30,000/-	---
05.	Attendant charges	Rs.20,000	---
TOTAL		Rs.1,75,000/-	Rs.3,50,000/-

22. Accordingly, the Appeal is allowed in part, enhancing the compensation awarded by the Tribunal from Rs.1,75,000/- to Rs.3,50,000/-. However, in view of foregoing discussion, Respondents 1 and 2 are jointly and severally liable to pay 50% of the awarded compensation and the remaining 50% by the Respondent No.3. The rate of interest awarded by the Tribunal at the rate of 9% p.a. is also modified to that of 7.5% p.a. payable from the date of petition till realization. Out of Rs.3,50,000/- awarded by this Court, appellant-petitioner is entitled to withdraw an amount of Rs.1,00,000/-, in addition to the withdrawal

permitted by the Tribunal. The remaining amount and interest shall be kept in any F.D.R. The appellant-petitioner is at liberty to move applications before the Tribunal periodically for withdrawals. The other conditions in the impugned order remain unaltered.

23. As a sequel, pending miscellaneous petitions, if any, shall stand closed as infructuous. No order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 10.03.2017.
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HON'BLE Dr. JUSTICE SHAMEEM AKTHER

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M.A.C.M.A. No. 172 OF 2006

Date. 10.03.2017

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