

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A. No.66 OF 2007

JUDGMENT:

1. This Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), is preferred by the appellant-insurer, aggrieved by the order dated 31.08.2006, passed in M.V.O.P. No.481 of 2000, by the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Chittoor (for short, 'the Tribunal'); wherein the Tribunal awarded the compensation of Rs.5,30,600/-, against the original claim of Rs.6,00,000/-, with proportionate costs and interest at the rate of 7.5% p.a. from the date of petition till realization, making respondents 1 and 2, who are the owner and insurer of Tempo Trax bearing registration No.AP-03D-6768 (for short, 'the crime vehicle'), jointly and severally liable to pay the compensation, dismissed the claim against the 3rd respondent - A.P.S.R.T.C.

2. Appellant herein is the 2nd respondent - insurer, 2nd respondent herein is the 1st respondent - owner of the crime vehicle, 3rd respondent herein is the A.P.S.R.T.C. and the 1st respondent herein is the claim petitioner, who filed the petition before the Tribunal, under Section 166 of the Act, claiming compensation of Rs.6,00,000/- on account of the injuries sustained by him in a motor vehicle accident occurred on 04.10.2000.

3. The parties hereinafter are referred to as arrayed before the Tribunal.

4. The case of the petitioner, as narrated in the petition, in brief, is that on 04.10.2000 at about 01:20 p.m., when he, along with other passengers, was travelling by the crime vehicle, from Kuppam to Tirupati, belonging to the 1st respondent, insured with the 2nd respondent, to attend the Chief

Minister's programme at Tirupati, and when the crime vehicle reached near Mordhanapalli village, the driver of the crime vehicle drove the same at high speed, in a rash and negligent manner, and dashed against the A.P.S.R.T.C. bus bearing registration No.AP-10Z-5356, which was coming in their opposite direction; as a result of which, except the petitioner, who sustained severe injuries, the other passengers travelling by the crime vehicle succumbed to the injuries. Immediately, the petitioner was shifted to Government Hospital, Chittoor and, thereafter, he was referred to C.M.C. Hospital, Vellore, where he was treated as inpatient for 20 days in two spells; the petitioners right hand was amputated up to shoulder level, sustained fracture to his right leg below the knee, implants were fixed to his right leg and fractured portion and skin grafting was also done to him. A case in Crime No.66 of 2000, for the offences punishable under Sections 304-A, 337 and 338 I.P.C., was registered by the Yadamari P.S. against the driver of the crime vehicle. Due to the grievous injuries sustained, the petitioner was unable to move without the assistance of any attendant. The petitioner spent an amount of Rs.60,000/- towards medical expenses. He was further advised to undergo operation in future. The petitioner, who is aged 25 years, working as Photographer, and earning an amount of Rs.5,000/- p.m. claimed compensation of Rs.6,00,000/- against the Respondents 1 to 3.

5. Respondent No.1, owner of the crime vehicle, remained *ex parte* before the Tribunal.

6. Respondent No.2 – insurer, and respondent No.3 – A.P.S.R.T.C., filed separate counters, before the Tribunal, denying all the allegations mentioned in the claim petition. 2nd respondent – insurer further contended that the age, occupation, income and the nature of injuries, disability and the treatment undergone by the petitioner be put to strict

proof of the same and there was no rashness and negligence on the part of the driver of crime vehicle, the A.P.S.R.T.C. bus bearing No.AP-10Z-5356 is solely responsible for the accident and sought to dismiss the Petition against him. Whereas, the 3rd respondent – A.P.S.R.T.C. contended that there was no rashness and negligence on the part of its driver; registration of criminal case itself shows the negligence on the part of the driver of crime vehicle. It was further contended that if any compensation is payable, respondents 1 and 2 alone are liable to pay the compensation and sought for dismissal of the Petition against him.

7. The Tribunal, after framing issues and, considering the evidence of P.Ws.1 to 3 and the documents Exs.A-1 to A-8, Exs.B-1 and B-2 and Exs.X-1 and X-2, granted compensation of Rs.5,30,600/- with proportionate costs and interest at the rate of 7.5% per annum from the date of petition till realisation holding that the respondents 1 and 2 alone are liable to pay the compensation, dismissed the claim against the 3rd respondent. Aggrieved by the impugned order, 2nd respondent, insurer of the crime vehicle, preferred the present appeal, contending that the compensation awarded by the Tribunal is excessive.

8. Heard the arguments of learned standing counsel for the appellant-insurer and the learned counsel appearing on behalf of respondent-claim petitioner. In spite of service of notice, none entered appearance on behalf of the Respondents 2 and 3, who are the owner of the crime vehicle and the A.P.S.R.T.C.

9. Learned standing counsel appearing on behalf of the appellant-insurer submitted that the findings of the Tribunal are contrary to law and facts. The Tribunal has taken Rs.2,500/- p.m. as income of the petitioner, which is excessive; further, the Tribunal erroneously relying on Ex.A-1,

certified copy of F.I.R., tagged the liability only on respondents 1 and 2; instead, it ought to have taken into consideration the head on collision between the crime vehicle and the A.P.S.R.T.C. bus and held that the 3rd respondent is liable to pay compensation, and also submitted that the compensation awarded by the Tribunal is excessive, prayed to allow the Appeal setting-aside the impugned order.

10. *Per contra*, learned counsel appearing on behalf of the respondent-claim petitioner contended that the petitioner was aged 25 years, earning Rs.5,000/- p.m. by working as photographer, as on the date of accident. Due to the accident, he suffered severe injuries, underwent treatment as inpatient for 20 days, incurred huge medical expenditure and also advised to undergo operation in future. The Tribunal, by taking into consideration all these facts and circumstances, has granted just and reasonable compensation; rightly dismissed the claim against the 3rd respondent, A.P.S.R.T.C. bus, and ultimately prayed to dismiss the Appeal, relied on a judgment of this Court in M.A.C.M.A. No.3378 of 2005, dated 18.09.2014, wherein, this Court dismissed the Appeal preferred by the appellant – insurer, pertaining to the same accident.

11. In view of the rival contentions put forth on behalf of both the counsel, the points that arise for determination are:

- 1) Whether the accident occurred due to rash and negligent driving of the Tempo Trax bearing registration No.AP-03D-6768 or due to the A.P.S.R.T.C. bus bearing registration No.AP-10Z-5356?
- 2) Whether the impugned order is liable to be set-aside?
- 3) To what result?

12. **POINT No.1:** The specific evidence of the petitioner, who was examined as P.W.1, is that he suffered injuries due to the rash and negligent driving of the driver of crime vehicle. The petitioner attributed negligence to the driver of crime vehicle. Except the petitioner, other passengers traveling by the crime vehicle succumbed to the injuries. To substantiate his case, the petitioner also got examined P.Ws.2 and 3 and marked Exs.A-1 to A-8 on his behalf. Ex.A-1 is the certified copy of F.I.R., Ex.A-2 is the certified copy of wound certificate, Ex.A-3 is the attested copy of Motor Vehicle Inspector's report, Ex.A-4 is the disability certificate, Ex.A-5 is the certificate issued by S.H.O., Kuppam P.S., Ex.A-6 is the certificate issued by Grampanchayat dt.29.06.2004, Ex.A-7 is the bunch of medical bills and Ex.A-8 is the photos with negatives. Under Ex.A-1 there is a specific mention that the petitioner suffered grievous injuries due to the rash and negligent driving of the driver of crime vehicle. Ex.A-5 is the Motor Vehicle Inspectors report, which discloses that there is no mechanical defect in the crime vehicle. The evidence of P.Ws.2 and 3 is corroborated with the evidence of the petitioner and the documents marked on his behalf. No evidence was adduced on behalf of the respondents to discredit the testimony of P.W.1. There is ample evidence on record to prove that he suffered injuries due to the rash and negligent driving of the driver of crime vehicle and as such the Tribunal rightly held that the respondents 1 and 2 alone are liable for payment of compensation and dismissed the claim against the 3rd respondent – A.P.S.R.T.C. The finding of the Tribunal is based on record. No other finding can be substituted on this score.

13. **POINT Nos.2 and 3:** Both these points go together. The petitioner suffered seven injuries; out of which, three are simple and four are

grievous in nature. As per Ex.A-2, issued by the C.M.C. Hospital, Vellore, the petitioner suffered following injuries:

- 1) Total amputation of right upper limb 10 C.M. from acromion;
- 2) 10 x 8 C.M. laceration in the medial border of stump;
- 3) 3 x 2 C.M. laceration in axilla;
- 4) 7 x 4 C.M. abrasion in right lower leg medially;
- 5) Compound fracture of right humerus Grade-III;
- 6) Compound fracture of right neck of scapula and acromion;
- 7) Undisplaced tibia intra-articular fracture schatzker closed.

14. As per the evidence of P.W.2, the doctor in the C.M.C. Hospital, Vellore, the petitioner was admitted in the hospital on 04.10.2000; on 05.10.2000 debridement of right upper limb was done; second operation was done to him on 09.10.2000 and second debridement of right upper limb stump and fixation of right tibia was done and the petitioner was discharged on 15.10.2000. On 18.10.2000, again the petitioner was admitted and further surgery and wound closure was done to him on 19.10.2000 as such discharged on 21.10.2000. Ex.A-4 is the disability certificate issued by the C.M.C. Hospital, Vellore, which discloses that the petitioner sustained 89% disability. P.W.2 further stated that Ex.A-7, bunch of medical bills 55 in number, issued by the C.M.C. Hospital, Vellore are true and genuine. Nothing was elicited in the cross-examination of P.W.2 to discredit his testimony. Thus, the Tribunal rightly taking into consideration all the above aspects, fixed the monthly income of the petitioner as Rs.2,500/-, annual income as Rs.30,000/-, applied the multiplier '18' applicable to the age group of the petitioner, relying on the II Schedule of the Act, and arrived at his notional annual income as

Rs.5,40,000/- and from it took 89% as the disability sustained by the petitioner, which is 4,80,600/- towards loss of earnings, past and future; the Tribunal further awarded an amount of Rs.50,000/- towards medical expenses. Thus, the Tribunal, in all, awarded a compensation of Rs.5,30,600/- with proportionate costs and interest at the rate of 7.5% p.a. from the date of petition till realization, holding that respondents 1 and 2, being owner and insurer of crime vehicle, are liable to pay the compensation and dismissed the claim against the 3rd respondent – A.P.S.R.T.C. There is no reason to disbelieve the evidence adduced on behalf of the petitioner. The Tribunal has taken all the factors into consideration and granted compensation on different scores. The conclusion arrived by the Tribunal is based on the ocular and documentary evidence. There is nothing to take a different view and substitute another finding.

15. Hence, and in view of the facts and circumstances, the Appeal is dismissed confirming the impugned order.

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

Dr. SHAMEEM AKTHER, J

Date: 10.03.2017.
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