

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

MACMA No.1410 OF 2010

JUDGMENT:

This appeal arises out of the order dated 17.05.2010 in M.V.O.P.No.128 of 2008 on the file of Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Ongole, FAC IV Additional District Judge, Ongole (for short "the Tribunal").

2. The appellant is the APSRTC. The 1st respondent herein is the injured in a motor vehicle accident that occurred on the intervening night of 07/08-12-2007. He filed M.V.O.P.No.128 of 2008 under Sections 163-A and 166 of Motor Vehicles Act claiming compensation of Rs.1,50,000/- on account of the injuries sustained by him in the accident. This is a case of collision between APSRTC and Auto. The petitioner was proceeding in an Auto and when he reached near RTC bus stand at about 1.30 a.m., an RTC bus bearing No.AP-11/Z-3197, driven by its driver in a rash and negligent manner, dashed against the Auto. The petitioner sustained grievous injuries in the said accident. Police registered a case in Cr.No.330 of 2007 of I Town Police Station, Ongole against the driver of RTC bus. The petitioner was admitted in Government Hospital, Ongole and an operation was conducted on him and steel rods were inserted. He was treated as inpatient for 45 days in the Hospital. He incurred medical expenditure of Rs.50,000/-. Therefore, he claimed compensation of Rs.1,50,000/- against the driver and owner of RTC bus.

3. The 1st respondent remained ex-parte before the Tribunal.

4. The 2nd respondent filed written statement denying the allegations of petitioner, including the manner of accident, age and occupation of the petitioner and the medical expenditure and disability suffered by him.

5. The 2nd respondent also stated that the accident occurred due to rash and negligent driving of the driver of Auto and not because of the driver of RTC bus. The Tribunal, on consideration of the evidence, awarded compensation of Rs.1,04,000/- with interest at 6% per annum from the date of petition till the date of realisation.

6. The appellant being aggrieved by the quantum of compensation and also the liability on the part of the driver of RTC bus has preferred this appeal.

7. The points for consideration in this matter is whether there is contributory negligence on the part of the driver of Auto and whether the quantum of compensation awarded by the Tribunal is excessive?

8. This is a case of collision between bus and Auto. The Tribunal held that the driver of the bus was rash and negligent in driving the bus. The Tribunal further held that there was no contributory negligence on the part of the driver of Auto. The Tribunal placed reliance on the evidence of PW.1, RW.1 and the documents Ex.A-1-FIR and Ex.A-2-charge-sheet and came to the conclusion that the accident occurred due to rash and negligent driving of the driver of RTC bus. No doubt, the Tribunal observed that the evidence of PW.1 and RW.1 is like oath against oath. However, the clinching point is based on the documents Exs.A-1 and A-2 FIR and charge-sheet. Police registered a case against the driver of APSRTC. Therefore, the evidence of PW.1 coupled with documents Exs.A-1 and A-2

would clinchingly prove that the accident occurred due to rash and negligent driving of the driver of APSRTC bus and therefore, there is no rash and negligent act on the part of driver of Auto.

9. Learned counsel for appellant submitted that the Tribunal awarded excessive compensation. It is mainly contended that an amount of Rs.50,000/- was awarded towards disability without there being any disability certificate filed by petitioner. It is appropriate to refer to the findings of the Tribunal in para '15' of the judgment, which read as under :-

“In this case the petitioner sustained fracture of both bones of right forearm and left femur. Eventhough the said injuries were healed, as per the evidence of PW.2, the petitioner can attend to his normal duties with some difficulty and restrictions. Due to the fracture to his right forearm and left femur, the petitioner may not be able to lift heavy weights throughout his lifetime. The petitioner did not produce disability certificate. Even in the absence of disability certificate, I am awarding Rs.50,000/- under this head, taking into consideration of the age and income of the petitioner.”

10. The finding of the Tribunal with regard to disability does not call for any interference, even though no certificate is produced in respect of disability. The Tribunal has rightly taken the age and income of the petitioner and also the nature of injuries suffered by petitioner and the future consequences, and awarded an amount of Rs.50,000/-, which cannot be considered as excessive compensation.

11. Having regard to the facts and circumstances of the case, it is obvious that the Tribunal has granted reasonable compensation, which does not require any interference. It is also pertinent to note that the

Tribunal has awarded only 6% interest whereas usually the courts are granting interest at 7.5% per annum.

12. In view of the foregoing reasons, I do not see any valid grounds in this appeal to set aside the award passed by the Tribunal in respect of findings on negligence and also in respect of grant of compensation.

13. In the result, the appeal is dismissed by confirming the award passed by the Tribunal. No order as to costs.

Miscellaneous petitions, if any pending, shall stand closed.

Date: 17-02-2017
Prv



GUDISEVA SHYAM PRASAD, J

