

THE HON'BLE SRI JUSTICE N.BALAYOGI

M.A.C.M.A. No.2782 of 2005

JUDGMENT :

The appellant/claimant aggrieved by the Award and Decree dated 25.06.2004 in O.P.No.931 of 2000 on the file of the Motor Accidents Claims Tribunal (IV ADJ-FTC) Nizamabad, preferred this appeal.

The claim of the petitioner is that on 19.12.1999 at about 4:30 PM while he was standing by the side of the road near Neela Kanteshwara printing press at Gandhari, an APSRTC Bus bearing No.AP-9-Z-3802 going from Gandhari towards Kamareddy driven by its driver in rash and negligent manner at a high speed lost his control and dashed against the petitioner due to which the petitioner sustained multiple and greivous head injuries, fracture of skull, fracture of ribs and other multiple and greivous injuries on various parts of the body. Immediately, the petitioner was taken to Government hospital, Nizamabad where he was treated in-patient, thereafter he was treated under private doctors and he incurred expenditure of more than Rs.60,000/- till now towards medical expenses and extra nourishment.

The petitioner was 8 years old by the date of accident and was working as a Milk vendor and earning a sum of Rs.3,000/- per month while attending to his studies.

The respondents filed counter affidavit contending that when the injured aged about 8 years suddenly tried to cross the road from right side to left side, the bus driver suddenly applied breaks and stopped the bus. Even then, the boy dashed against the front side of the bus and fell down on the road, due to which he sustained minor injuries. The boy was treated by a doctor at Primary Health Centre by giving first aid.

Basing on the above pleadings, the following issues haven been framed for trial:

1. *Whether the petitioner is entitled to compensation sought for?*
2. *To what relief the petitioner is entitled for?*

In support of his claim, the petitioner's mother was examined as P.W.1 and Exs.A1 to A4 were marked. No oral and documentary evidence was produced by the respondents.

The trial Court, after appreciating the oral and documentary evidence, came to the conclusion that the petitioner sustained injuries due to rash and negligent driving of RTC bus driver and awarded compensation of Rs.25,000/- with proportionate cost and with interest at 9% per annum from the date of petition till the date of deposit. The respondents No.1 & 2 were held jointly and severally liable to pay the compensation to the petitioner; and the 2nd respondent was directed to deposit the compensation amount within (30) days in any Nationalised Bank. The petitioner was permitted to withdraw Rs.5,000/-(Rupees

Five Thousand only) and the remaining amount was directed to be deposited in any Nationalised Bank till the petitioner attains majority. The petitioner was also permitted to withdraw the interest of the remaining principal amount of Rs.20,000/-(Rupees Twenty Thousand only) termly i.e., once in every three months.

Now, the point that arises for determination is:

“Whether the Award is suffering from any legal infirmities warranting interference in the appeal?”

The learned counsel for the appellant contended that the trial Court erred in awarding meagre amount of compensation, and it has not awarded just compensation and has failed to apply relevant multiplier for awarding compensation.

Per contra, learned counsel for the respondent contended that the trial Court, basing on the evidence available on record, awarded just compensation which does not suffer from any legal infirmity.

Since it is an appeal claim, there is no dispute with regard to findings of rash and negligent driving. P.W.1 is the next friend, guardian and mother of the injured. Her evidence is that while her son was standing by the side of the road, the RTC bus came from Gandhari towards Kamareddy and dashed her son in rash and negligent manner, due to which he sustained injuries.

Ex.A1 is the certified copy of the F.I.R and Ex.A2 is the copy of the charge sheet.

In Ex.A1 i.e FIR as well as the Investigating Officer in Ex.A2 i.e, charge sheet gave a specific assertion that while the injured was on the way to home, at about 4:30 PM near the Neelakanteshwara Printing Press, an RTC bus bearing No.AP-9-Z-3802, driven by its driver in a rash and negligent manner, dashed the petitioner from behind side, due to which the petitioner sustained injuries.

The trial Court having considered the documentary evidence of P.W.1 and Exs.A1 and A2 came to the conclusion that accident occurred due to the rash and negligent driving of the driver of the RTC bus.

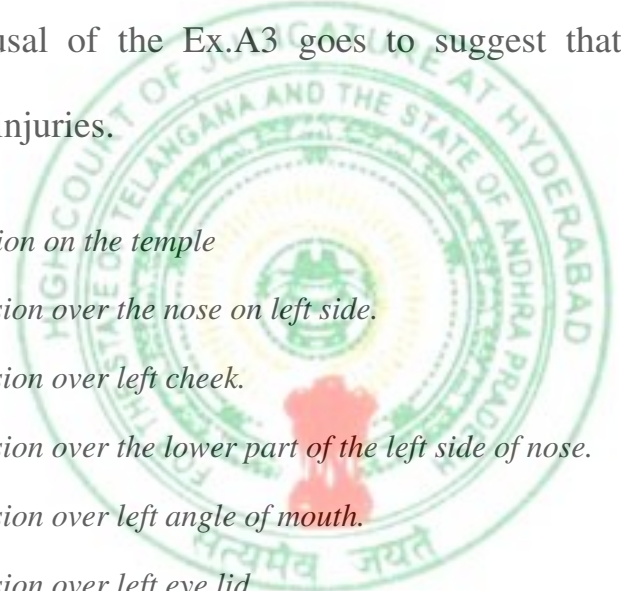
With regard to the gravity of injuries, except the evidence of P.W.1, no other medical evidence produced by the petitioner. P.W1's evidence remain unchallenged and established. Immediately, after the accident, the injured was shifted to Government Hospital, Banswada, and the Doctors there referred her son to Government Hospital, Nizamabad, where he took treatment for 15 days and incurred Rs.80,000/- towards medical expenses.

During the cross examination, P.W.1 clearly stated that while she was standing along with her son by the side of the road for purchase of vegetables, her son was dashed by the RTC bus and thereafter her son was treated in Primary Health Centre. The injuries sustained by her son are mentioned in Ex.A3. She also admits that she did not file any document with regard to private hospital at Nizamabad.

Therefore, the evidence of P.W.1 would show that absolutely there is no evidence with regard to treatment of her son in any private hospital.

Admittedly, there is no corroborative medical evidence to the evidence of P.W.1. Ex.A3 is the Wound certificate, Ex.A4 is the CT-scan. There is no convincing evidence on record to establish any fracture injuries as asserted by the petitioner in the complaint that her son sustained greivous injuries.

A perusal of the Ex.A3 goes to suggest that son of P.W.1 sustained 12 injuries.

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- 1. Abrasion on the temple*
 - 2. Abrasion over the nose on left side.*
 - 3. Abrasion over left cheek.*
 - 4. Abrasion over the lower part of the left side of nose.*
 - 5. Abrasion over left angle of mouth.*
 - 6. Abrasion over left eye lid.*
 - 7. Abrasion over the index.*
 - 8. Abrasion over left hand*
 - 9. Abrasion over lower forearm*
 - 10. C/o pain on the side of back of trae torsa .*
 - 11. Two abrasion over front of knee foot.*
 - 12. One abrasion over front of the knee foot.*

It is clearly stated in the evidence of P.W.1 that in the Primary Health Centre her son took treatment for 15 days. Ex.A3 shows that he took treatment on 21.12.1999. In Ex.A3, there is specific mention

that after discharging from the Primary Health Centre, Gandhari, he was referred to a Private Hospital in Nizamabad .

As already discussed above, there is evidence showing that the petitioner incurred Rs.80,000/- towards medical treatment. However, in view of the injuries sustained by the petitioner, he has to purchase the medicines outside which are not available in the hospital and incurred some amount which the trial Court did not consider.

Having considered the majority of 12 injuries sustained by the petitioner, even though they are simple in nature and also considering the age of injured as 8 years at the time of the accident, I am of the considered view that the amount awarded by trial Court is meagre which requires modification.

Accordingly, to meet the ends of justice, the petitioner is entitled for Rs.3000/- to each simple injury i.e(12x3000), Rs.6000/- towards medicines and Rs.1,000/- towards transportation and Rs.5,000/-towards nutrition and the amount of Rs.12,000/- towards pain and suffering remain unchanged. In all, the injured is entitled for Rs.60,000/-.

Accordingly, Appeal is allowed by modifying the award of the trial Court with interest @ 9% per annum from the date of filing of the petition till deposit, and the respondents shall deposit the amount within thirty days from the date of receipt of copy of the order excluding the amount already paid, if any.

By now, the petitioner may be aged about 26 years and attained majority. Therefore, he is permitted to withdraw the entire amount on such deposit.

Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE N.BALAYOGI

06.11.2018
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