

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M. A. C. M. A. No. 1512 of 2009

JUDGMENT:

This appeal arises out of the Order dated 12.08.2008 passed in O.P.No.1233 of 2005 on the file of XVII Additional Chief Judge-cum-III Additional Metropolitan Sessions Judge, at Hyderabad (for short, 'the Tribunal'). The appellants-APSRTC are the respondents in the claim petition. The petitioner is a minor girl aged 2 years, injured in a motor vehicle accident. The father of the petitioner being natural guardian has preferred this appeal on her behalf. Originally, the claim petition was filed under Section 166 of the Motor Vehicles Act, claiming compensation of Rs.10,67,500/- with interest at 12% per annum towards the injuries suffered by the minor girl in the motor vehicle accident. On 04.09.2004, at 4:00 PM, while the mother of the injured carrying the baby in her right arm and crossing the road, the bus coming from Raichur to Hyderabad came to the extreme left side of the road, driven in a rash and negligent manner, dashed the mother of the baby and consequently the baby suffered grievous injuries to the head with two holes and profuse bleeding. The Police, Shadnagar P.S., registered a case in Crime No.205 of 2004 against the RTC bus. The petitioner has taken treatment in various hospitals. The speech and also the figure of the minor girl affected due to the injuries suffered by her in the accident.

The respondent has filed counter affidavit denying the negligence on the part of the driver of APSRTC bus and also disputed the quantum of compensation. The Tribunal, on consideration of the evidence of witnesses PWs.1 to 5 and the documents Exs.A1 to A10, and the evidence of RW1, has awarded compensation of Rs.2,32,500/- with interest at 7.5% per annum. Aggrieved by the impugned order of the Tribunal, this appeal has been preferred by the APSRTC.

Heard the arguments of Sri N. Vasudeva Reddy, learned counsel for the appellants-RTC. None appeared on behalf of the respondent-claimant.

The point for consideration in this matter is, (i) whether there is no negligence on the part of the driver of APSRTC bus; and (ii) whether the quantum of compensation awarded by the Tribunal is excessive.

The Tribunal, on consideration of the evidence of witnesses PWs.1 to 5, and the documents Exs.A1 to A10 on behalf of the petitioner; and the evidence of RW.1 on behalf of the respondents-RTC, has held that the accident occurred due to the rash and negligent driving by the driver of RTC bus, and held the owner and insurer liable for payment of compensation.

The Tribunal held that the accident occurred while PW.1 was carrying the baby and crossing the road, the bus dashed against the petitioner. In fact, the accident occurred at 4:00 PM, in broad day light, near Shadnagar, Mahabubnagar District. The driver of the bus is expected

to drive carefully as there was a hospital and it is not uncommon that people would be crossing the road near the hospital. In this regard, the evidence of PW.2 reveals that on the fateful day at about 4:00 PM, after the school hours (of United Public School, Shadnagar), she along with her two year old daughter came out of the school and was waiting on the main road to board an auto rickshaw. At that time, the RTC bus coming from Bangalore side, driven by its driver in a rash and negligent manner, dashed against her right hand, as a result of which, she received injuries to her head. According to the testimony of PW.2, she was an injured witness. Her testimony reveals that the accident occurred due to the rash and negligent driving by the driver of RTC bus. The Tribunal, on consideration of the evidence of PW.2 and the document Ex.A1-FIR, came to the conclusion that the accident occurred due to the rash and negligent driving by the driver of RTC bus.

In the light of the evidence of PW.2, and the document Ex.A1, the findings of the Tribunal in arriving at the conclusion with regard to the rash and negligent act on the part of the driver of the bus need not be interfered with.

As regards the other contention of the learned counsel for the appellant is concerned, the medical expenditure claimed by the petitioner under Ex.A9-discharge bills of Hope Hospital, Ex.A10-bunch of medical bills, and Ex.A3-medical invoices and bills, comes to

Rs. 40,000/-, whereas the Tribunal has awarded Rs. 90,000/- without there being any proof of medical expenditure for that amount.

On a perusal of Ex.A2-discharge summary, the medical expenditure incurred by the petitioner was Rs. 37,899/- and the same is supported by the testimony of Billing Manager-PW4. As far as Ex.A2 is concerned, PW.5-the executive of Laxmi Neuro Centre deposed that the petitioner made payment of Rs. 6,850/-. Therefore, it is argued that the petitioner is not entitled to claim Rs. 90,000/- in the light of evidence of PW.2 and PW.5.

The testimony of PW.3 assumes importance to prove the nature of treatment, and admission into the hospital on 04.09.2005, and removal of bone. During the post operative period, she has improved gradually. The injuries received by her were found to be grievous in nature and she developed weakness in her left leg, due to which she is unable to walk normally. She is limping, and unable to play like other children.

The medical officer, considering these facts, issued disability certificate, assessing the disability between 35% and 40%, and the Tribunal, considering the evidence of medical officer has assessed the compensation, taking into consideration the disability as 40%.

On consideration of the entire evidence of PW.3, PW.4 and PW.5, the Tribunal arrived at an amount of Rs. 86,000/- towards medical expenditure, but awarded Rs. 90,000/-.

Having regard to the facts and circumstances of the case, there are no valid grounds to interfere with the findings of the Tribunal, except for reducing the medical expenditure from Rs. 90,000/- to Rs. 86,000/-.

IN THE RESULT, the appeal is partly allowed, by reducing the quantum of compensation awarded by the Tribunal from Rs. 2,32,500/- to Rs. 2,28,500/-, with interest at 7.5% per annum from the date of petition till realisation, and rest of the award shall be intact. Miscellaneous petitions, if any pending, shall stand closed.

11th July, 2018
KSM

GUDISEVA SHYAM PRASAD, J



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