

THE HON'BLE MS. JUSTICE J.UMA DEVI

M.A.C.M.A.No. 1570 of 2010

JUDGMENT:

Against the Award dated 11th September, 2009 in M.O.P.No. 1396 of 2006 on the file of the Motor Accident Claims Tribunal-cum-IV Additional District Judge, Visakhapatnam, the present appeal is filed by the Managing Director of A.P. State Road Transport Corporation and Regional Manager of A.P. State Road Transport Corporation (hereinafter mentioned as "APSRTC"), Visakhapatnam, who have been arrayed as the 2nd and 3rd respondents in the aforementioned O.P.

2. The main grievance of the appellant is that the court below has come to a wrong conclusion that the accident occurred due to the negligent driving of the R.T.C. bus bearing No. AP 10Z 7724 by its driver. The argument of the APSRTC is two fold. They contend that though the Claimant is equally responsible for the occurrence of the accident, the Tribunal has wrongly held the driver of the RTC bus alone responsible for causing the accident. The appellant also states that the Tribunal ought to have dismissed the claim petition on the ground that the Insurance Company of Yamaha Motorcycle bearing No. AHQ 4008, has not been added as party. Apart from the aforementioned contentions, yet another contention is raised by the appellant-APSRTC that the Tribunal erred in awarding compensation of Rs.50,000/- under the head of medical expenditure, and the medical bills produced by the petitioner are not true and genuine.

3. As the appellant-APSRTC is disputing negligence on the part of the driver of the APSRTC bus bearing No. AP 10Z 7724 and the quantification

of compensation, the evidence on record needs to be re-appreciated for disposal of the appeal.

4. The case of the Claimant, as stated in his claim statement, was that on 05.03.2006, while he was returning towards Visakhapatnam from Pishikonda along with his friend on his Yamaha motorcycle bearing No. AHQ 4008, when they reached near Sagar Nagar Blind School area, an RTC bus bearing No. AP 10Z 7724 which was coming from Sagar Nagar side, in a rash and negligent manner, gave a hit to their motorcycle, and as a result of it, he fell down from the motorcycle and sustained fracture injuries to both his legs. Immediately after the accident, he was admitted in King George Hospital (KGH) and from there, he was shifted to Smhadri Hospital for better treatment. The Traffic Police III Town registered a case in Crime No. 47 of 2006 on the basis of the statement given by Dasari Suresh Kumar. It was also asserted by the Claimant in his pleadings that he was earning Rs.3,308/- per month towards salary by working in Daspalla Hotels Limited. He was also getting Rs.1,200/- per month towards overtime allowance and service charges of Rs.500/- per month. As he was confined to bed due to fracture injuries he received to both his legs during the period of treatment, he could not attend to any work. As he became incapable of attending to any work, he lost the source of livelihood. Therefore, he laid a claim of Rs.6,00,000/- as against APSRTC.

5. The Claimant, to prove his claim before the court below, had examined himself as PW1 and examined Dasari Suresh Kumar, who lodged a complaint before the III Town Traffic police at Visakhapatnam. He examined PW3 (Dr. Uday Kumar) and PW4 (Dr.K.Rajasagar) to prove the nature of treatment he underwent in KGH and Smhadri Hospital at Visakhapatnam. The court below, placing reliance on the evidence given

by PW1 and also the evidence of PW2, who lodged a complaint before the III Town Traffic police regarding the accident, came to the opinion that due to the negligent driving of the APSRTC bus bearing No. AP10Z 7724 by its driver, the accident dated 05.03.2006, in which the Claimant sustained fracture injuries to both his legs, occurred. Accordingly, the court below held the management of APSRTC, Visakhapatnam, under whose administrative control the driver of the offending bus was working at the relevant point of time, liable vicariously, and made him liable to pay compensation to the claimant.

6. Though it has been urged by the appellant-APSRTC that there was composite negligence on the part of the Claimant also, and he equally contributed to the occurrence of the accident, no evidence of any sort is adduced by it in this regard. No attempt is made by APSRTC to disprove the oral testimony of PWs 1 and 2, which clinchingly establishes negligence on the part of the driver of the RTC bus bearing No. AP 10Z 7724 in causing the accident. Relying on the oral testimony of PWs 1 and 2, whose evidence is corroborated with the contents of Exhibits A1 to A4, in all aspects, the court below has rightly held that the driver of the bus bearing No. AP 10 Z 7724 is responsible for causing the accident dated 05.03.2006, in which the Claimant received fracture injuries to both his legs.

7. It is evident from Ex.A4-the Wound Certificate cum Medico Legal Record that immediately after the accident, the Claimant was taken to KGH and within no time, he was shifted to Smhadri Hospital for better treatment, and there, PW4 examined him and noticed pain, swelling and deformity of right thigh. After X-ray of the right thigh was taken, PW4 noticed fracture to right femur, fracture of both bones of the right leg and lacerated wound of 10x2 cm., on the left leg. As per the particulars

mentioned in Ex.X1-case sheet, the Claimant was admitted in Smhadri Hospital again for treatment. During the course of his admission on the second instance, he was provided with treatment as an in-patient from 28.06.2006 to 30.06.2006. Though the case sheet relating to the treatment taken by the Claimant in Smhadri Hospital at the first instance was not brought by PW4, during the course of his examination, he deposed in clear and categorical terms that the Claimant was admitted in Smhadri Hospital on 05.03.2006 and was treated there as an in-patient upto 31.03.2006. During the course of his treatment as an in-patient for the period from 05.03.2006 to 31.03.2006, the Claimant underwent two surgeries and the same were conducted by PW4. As the evidence of PW4 was crystal clear to the effect that the Claimant sustained fracture injuries to both bones of his right leg and a lacerated wound of 10x2 cm to his left leg, the court below awarded a total sum of Rs.50,000/- under the head pain and suffering in respect of the two fracture injuries to his right leg and Rs.5,000/- in respect of the lacerated wound received to his left leg. The Claimant could prove that he had taken treatment for considerable period of more than 25 days as an in-patient, during which time he underwent two surgeries for correction of fracture injuries. Taking note of the nature of the fracture injuries received to his right thigh, where there was swelling and deformity (as mentioned by PW4, the consultant surgeon of Smhadri Hospital), the court below awarded a sum of Rs.50,000/- under the head of medical expenditure. The amounts were awarded by the court below under the head of medical expenditure appears to be fair and reasonable.

8. The Claimant, in proof of his contention that he became incapable of attending to any work on account of the fracture injury received to

right femur and was confined to bed for a considerable period, produced Ex.A4 and examined PW4, under whose care and supervision he took treatment in Smhadri Hospital, Visakhapatnam. The court below, taking note of the evidence given in this regard by PW4, awarded Rs.3,000/- towards loss of income during the period of hospitalization and treatment. Since the Claimant could not produce the X-ray in proof of the disability he attained, the testimony of PW3 given in this regard was rightly not taken to consideration by the court below.

9. As the amount of compensation of Rs.1,18,000/- awarded by the court below under the various heads, such as pain and suffering, medical expenditure, loss of income during the period of hospitalization and the other incidental expenditure, appears to be fair and reasonable, I find no merit in the contention of the appellant that the amount awarded to the claimant under various heads is excessive. As the appellant has failed to convince this Court that the award under challenge suffers from any factual or legal infirmities, the appeal filed by it fails, and the same is hereby dismissed accordingly.

10. Accordingly, the appeal is dismissed. There shall be no order as to costs. Miscellaneous applications pending, if any, stand closed.

J.UMA DEVI, J

Date: 12.12.2018
DMG