

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3039 OF 2007

JUDGMENT:

This appeal, under Section 173 of the Motor Vehicles Act, 1988, is filed by the appellant/the Andhra Pradesh State Road Transport Corporation (presently, T.S.R.T.C.), aggrieved by the grant of compensation of Rs.6,50,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, as against a claim of Rs.8,00,000/- to the respondent/claimant, by the learned Chairman, Motor Accident Claims Tribunal – cum – District Judge, Khammam (for short, “the Tribunal”) *vide* order, dated 23.01.2007, passed in M.A.T.O.P.No.1241 of 2005.

2. Heard the submissions of the learned counsel for the respondent/claimant and perused the material on record. Though the matter is posted under the caption “For Orders”, there is no representation for the learned Standing Counsel appearing for the R.T.C. representing the appellant. As the matter pertains to the year 2007, the appeal is being disposed of.

3. Learned counsel for the respondent/claimant would contend that the Tribunal is justified in granting the compensation of Rs.6,50,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, as against a claim of Rs.8,00,000/-; that in view of the grievous injuries suffered by the claimant, he lost his job as Driver of the R.T.C. and there is ample evidence on record to believe that the injuries were caused due to

the rash and negligent driving of the driver of R.T.C. Bus bearing No.AP-10-Z-9406 and ultimately, prayed to dismiss the appeal.

4. As seen from appeal grounds, this appeal is filed by the R.T.C. seeking to set aside the impugned order on the ground that there was contributory negligence on the part of the respondent/claimant in occurrence of the subject accident. Further, the Tribunal granted excessive compensation for simple and grievous injuries and there is nothing to hold that the claimant suffered 100% disability and became unfit for the post of Driver.

5. In view of the submissions made by the learned counsel for the claimant, the following points come up for determination:

- “1. Whether there is any contributory negligence on the part of the respondent/claimant?***
- 2. Whether the Tribunal is justified in granting compensation of Rs.6,50,000/-? and***
- 3. Whether the impugned order is liable to be set aside?”***

6. **POINT No.1:-**

There is specific evidence of the claimant that on 13.12.2004, when he was going on his moped bearing No.AP-20-E-2630 from Gandhi Chowk to Khanapuram Haveli to go to his house and when he reached near Jubilee Club and turning towards Khammam Bus Station at fly over bridge, the driver of R.T.C. Bus bearing No.AP-10-Z-9406 drove the bus in a rash and negligent manner from Khammam Bus Station towards Kodada and dashed the claimant due to which, he suffered the injuries. To substantiate the same, the claimant placed material on record i.e., Ex.A-1 -

certified copy of F.I.R. and Ex.A-2 - certified copy of charge sheet wherein it is mentioned that the driver of the R.T.C. Bus bearing No.AP-10-Z-9406 drove the bus in a rash and negligent manner and caused injuries to the claimant. Though the contention of the R.T.C. before the Tribunal was that there was no rashness and negligence on the part of the driver of R.T.C. Bus bearing No.AP-10-Z-9406, no oral or documentary evidence was adduced to substantiate the same. The Tribunal is justified in holding that there was rashness and negligence on the part of the driver of R.T.C. Bus bearing No.AP-10-Z-9406 in causing the subject accident. Accordingly, this point is answered in favour of the claimant.

7. **POINT Nos.2 & 3:-** As per the evidence placed on record, the claimant suffered the following injuries in a road accident that occurred on 13.12.2004:

- “1. Avulsion injury 15 x 12 cm in the Right knee and leg P3 and Popliteal fossa.***
- 2. Avulsion with degloving of left leg from knee to ankle.***
- 3. Avulsion of distally based flap of weight bearing heel.***
- 4. Surgical emphysema of right side of chest with decreased air entry right side.***
- 5. Fracture of base of proximal phalanx left 2nd toe.***
- 6. Fracture of epicondyle.***
- 7. Three right side ribs were injured.”***

There is also medical record to substantiate the same i.e., Ex.A-3 – certified copy of Medical Certificate, Ex.A-4 – Discharge records, Ex.A-5 – original estimate certificate issued by NIMS, Hyderabad, Ex.A-8 – Medical Bills, Ex.A-9 – Medical Certificate issued by NIMS, Hyderabad, Ex.A-10 – Medical prescriptions, Ex.A-11 – C.T. Scan report, Ex.A-12 – Medical records issued by NIMS,

Hyderabad, Ex.A-14 – X-ray films and Ex.A-15 – photographs with negatives (five in number). Placing reliance on the evidence of P.W.1 and also the evidence of P.W.2 – Dr.R.Srikanth, who corroborated with the medical record and the injuries narrated by the claimant, the Tribunal held that the claimant suffered injuries on vital organs and in view of the said injuries, the claimant could not discharge his duties as a Driver. There is also evidence that he was removed from service by the R.T.C. Considering the same, grant of compensation of 100% disability is not erroneous. The Tribunal had taken the monthly salary of the claimant as Rs.6,842/- and after deducting 1/3rd thereof, which ought not to have been done, calculated and awarded the compensation of Rs.6,50,000/-. The compensation granted by the Tribunal is not excessive or exorbitant. The impugned order does not warrant interference by this Court. Hence, the points are answered in favour of the claimant. Accordingly, the appeal is devoid of merit and is liable to be dismissed.

8. In the result, the appeal is dismissed. There shall be no order as to costs.

9. Miscellaneous petitions pending, if any, in this appeal shall stand closed.

DR.JUSTICE SHAMEEM AKTHER

Date : 04.09.2018
AMD

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