

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.1132 OF 2018

JUDGMENT:

The present Civil Miscellaneous Appeal is preferred by the erstwhile Andhra Pradesh State Road Transport Corporation, through its Managing Director, challenging the judgment and decree in M.V.O.P. No.450 of 2010 dated 25.09.2017, whereby and whereunder, the learned Chairman, Motor Accidents Claims Tribunal-cum-X Additional District Judge, Tirupati, awarded a sum of Rs.5,11,898/- as compensation with interest at 7.5% per annum, against it, while dismissing the claim petition against respondent Nos.2 and 3 herein, who are owner of Bajaj Tempo bearing No.KA-03-C-0118 and its insurer viz., The New India Assurance Company Limited, Bengaluru, respectively.

2. The aforesaid judgment and decree were passed for the injuries sustained by respondent No.1 herein viz., Arjuna Paramesa, who is claimant, while driving ambulance of the Comprehensive Trauma Consortium Operation, Sanjeevani, Bangalore, in which organization, he was employed. In fact, it is claimed, the claimant has received the award of "Best Driver" from the office of C.T.C. Sanjeevani in the year 2007 and holds driving licence to drive non-transport and transport vehicles from 13.08.1997 to 31.07.2012.

3. Turning to the facts, on 17.10.2008 at 10-50 a.m., when a wireless message was received from Water Works, T.T.D., Tirumala and C.T.C. Sanjeevani Control Room, through ambulance, to which the petitioner was on duty as driver, to the effect that near Akkagari Temple, a pilgrim had a medical problem, the claimant, who was waiting at 35th turning at Tirumala to Tirupati Fire Ghat Road, received directions from his office to go in the opposite direction to render medical aid to the patient as early as possible, he started the ambulance, put all the signals, head light, lummo light, thousand watts siren, indicators as per traffic rules and guidelines, and at 10-40 a.m., moved towards Akkagari Temple and after passing 7th Mile and before reaching Elephant Arch, at light turning in 41st and 42nd culvert, Corporation bus bearing No.AP-28-Z-3872, belonging to the appellant herein of Tirumala Depot, came in opposite direction at high speed and hit the ambulance, despite the claimant trying to control the ambulance observing rash and negligent driving of the Corporation bus, due to which, front portion of the ambulance collided resulting multiple injuries to claimant, losing four lower jaw teeth, fracture of 6th, 7th and 8th bones of left side of the chest and deep cut injury to chin and upper lip.

4. A crime was registered against the Corporation bus driver. The claimant was, in fact, shifted to SVRRGG Hospital, Tirupati, and, thereafter, he was shifted to BOTH Hospital and treated under Doctor

Pasupuleti Hari Prasad and Dr. Murahari for one week. He sustained 55% disability and was advised five (5) months bed rest. He was absent to duties and he was on leave for 117 days i.e., nearly four (4) months. Therefore, he sought Rs.7,00,000/- towards compensation under Section 166 of the Motor Vehicles Act, 1988.

5. Respondent No.2, which is owner of the ambulance, remained *ex parte* before the Tribunal.

6. Respondent No.3 herein, the insurer of the ambulance, and the appellant herein, respondent No.1 before the Tribunal, resisted the claim by filing separate counters.

7. The resistance offered by the appellant herein is to the effect that the claimant himself drove the ambulance in the opposite direction at high speed and hit the bus at Tirumala Ghat Road, which is one way road, and the ambulance ought not to be driven in the opposite direction.

8. The learned Tribunal based on the above pleadings, settled the following three (3) issues for trial:

“1. Whether the injured viz Arjuna Paramesa sustained injuries in the motor vehicle accident that occurred on 17-10-2008 due to rash and negligent driving of the driver of Bajaj Tempo bearing Regn. No.KA 03 C 0018 duly insured with second

respondent and APSRTC bus bearing Regn. No.AP 28 Z 3872 as alleged?

2. Whether the Petitioner is entitled for compensation amount as alleged? If so, what is the quantum of compensation amount and against whom?

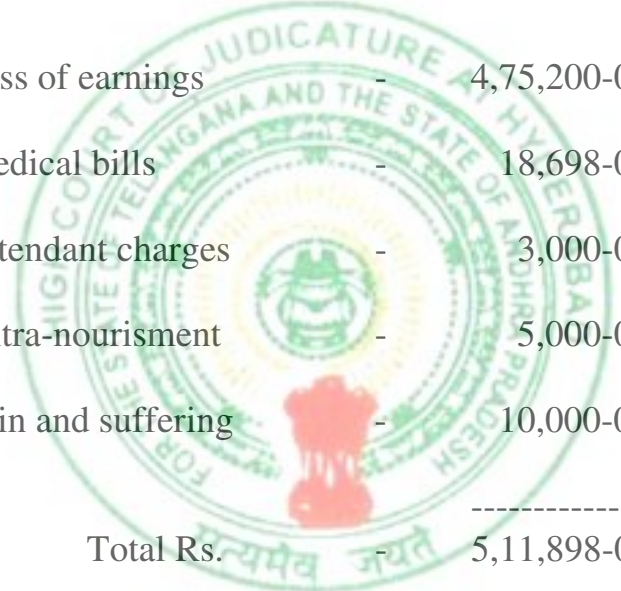
3. To what relief?

9. During enquiry, the claimant examined himself as PW.1, one A. Ganesh as PW.2, and Dr. V. Suryanarayana Rao and Dr. K.H. Durga Prasad Babu as PWs.3 and 4, respectively, and marked Exs.A-1 to A-17. On behalf of the appellant, RW.1 was examined. Respondent No.2, insurer of the ambulance, filed Ex.B-1, copy of the insurance policy of the ambulance, on consent.

10. The learned Chairman, on appreciation of evidence, did not believe the evidence of RW.1 and holding that when an ambulance is coming with signals, headlights, the driver of the Corporation bus was obligated with the duty to give way to the ambulance and proceed, which the driver of the Corporation bus did not do and on the other hand there was rash and negligent driving causing the accident. Thus, the learned Chairman found issue No.1 in favour of the claimant and against the Corporation bus.

11. On issue No.2, based on the evidence of PWs.3 and 4, who are the medical officers, found that the claimant suffered 60 decibels hearing loss to his right ear and 70 decibels loss to his left ear and it is

permanent loss of hearing, and, therefore, relied on Ex.A-15, case history of the claimant, and the evidence of the medical officers, and keeping in view, the permanent loss of teeth as well as fracture of ribs and permanent loss of hearing, taking multiplier factor '16', treating the claimant as 35 years old at the relevant time, and his monthly income at Rs.4,500/- based on Ex.A-17 issued by his employer, owner of the ambulance, worked out permanent disability at Rs.4,75,200/- and granted the following amounts;



“1. Loss of earnings	-	4,75,200-00
2. Medical bills	-	18,698-00
3. Attendant charges	-	3,000-00
4. Extra-nourishment	-	5,000-00
5. Pain and suffering	-	10,000-00

Total Rs.	-	5,11,898-00
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making a total of Rs.5,11,898-00 mulcting liability on the appellant alone.

12. Heard Sri A. Rama Rao, learned counsel for the appellant, and perused the judgment and decree under challenge including the material on record, and taken up for disposal at the admission stage itself.

13. The main contention of the learned counsel for the appellant is that there is contributory negligence as drivers of both the vehicles are responsible for the accident which the Tribunal did not properly appreciate. He would also submit that there is no permanent disfiguration and lost teeth were replaced, and, therefore, the Tribunal ought not to have relied on Ex.A-13 disability certificate issued by PW.3, and that Rs.18,698/- towards medical bills, Rs.3,000/- towards attendant charges, Rs.5,000/- for extra-nourishment and Rs.10,000/- towards pain and suffering, ought not to have granted as the claimant sustained simple injuries.

14. Since the appeal is taken up for disposal at the admission stage, there is no need to order notice to the claimant as there appears to be no merit in the appeal and the order and decree passed by the Tribunal; in fact, on a comprehensive reading, does not warrant interference at all, as there is no infirmity to interfere with the findings recorded by the Tribunal.

15. The evidence of PWs.3 and 4, who are medical officers, cannot be brushed aside. In fact, to erase the evidence of PWs.3 and 4, there ought to be searching cross-examination to point out what all observed by them was incorrect. Nothing is to be found in that direction and in such an event, 55% disability so far as hearing capacity of the petitioner is concerned, the same cannot be doubted as the claimant suffered 60 decibels hearing loss to right ear and

70 decibels loss to his left ear, which is permanent in nature, besides other injuries referred to above i.e., loss of teeth, fracture of ribs described in the above. Even the multiplier factor adopted by the Tribunal is on correct lines as the claimant was '35' years old on the date of accident as provided in the table formulated by the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**¹.

16. So far as monthly earnings of the claimant are concerned, it is evidenced by Ex.A-17, and, therefore, it cannot be said that without legally acceptable evidence, the Tribunal determined the compensation. So far as submission of the learned counsel for the appellant that the claimant contributed to the accident is concerned, certainly, it does not merit for the reason that when an ambulance is coming in the opposite direction, though, the way is one way, certainly, the driver of the Corporation bus is bound to admit passage to the ambulance, in which direction, there appears to be complete failure on the part of the driver of the Corporation bus that resulted in accident.

17. The very fact that the police registered a case against the driver of the Corporation bus is sufficient to hold that due to rash and negligent driving of the Corporation bus driver only, the accident had occurred. Thus, the finding recorded by the Tribunal on this aspect of

¹ 2009 (6) SCC 121

the case cannot be interfered with. Even determination of compensation is just and fair as discussed hereinabove.

18. Therefore, the Civil Miscellaneous Appeal is dismissed, at the admission stage itself. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the present Civil Miscellaneous Appeal stand dismissed.

May 1, 2018.

PV/MGR



A. SHANKAR NARAYANA, J