

HON'BLE SMT JUSTICE J.UMA DEVI

MA CMA No.1516 of 2010

JUDGMENT:

This appeal is preferred by the respondents before the court below, against the judgment and decree, dated 30.07.2009, passed by the V Additional Metropolitan Sessions Judge, Mahila Court at Hyderabad, in O.P.No.1001 of 2008, granting of compensation of Rs.2,78,000/- to the claimant.

2. For the sake of convenience, the parties hereinafter will be referred as they are arrayed in the O.P.

3. The factual background of the case, in brief, is as follows:

On 27.11.2007 while the petitioner was travelling in an APSRTC Bus from Pulivendula to Bangalore, when the bus reached near Kanisettipally Pullierupeddavenka on Kadiri-Gorantla road at 03:00 AM, the driver of it drove it in a rash and negligent manner and hit it to a stationed lorry, bearing No.AP 04 8063, and thereby the petitioner sustained grievous injuries. Immediately, after the accident, he was shifted to Area Hospital, Hindupur for treatment and from there he was shifted to Apollo Hospital, Secuderabad for better treatment. In the said accident, the petitioner sustained fracture injury to nasal bones, commuting fracture of tibia shaft left and fibula and lacerated injuries.

The respondents filed counter denying the allegations made by the petitioner in his pleadings and contended that the accident occurred not due to the rash and negligent driving of

the RTC Bus by its driver and that the compensation claimed by the petitioner is excessive.

4. In support of his claim, petitioner examined himself as PW1 and also examined PWs.2 and 3 and marked Exs.A1 to A7. On behalf of the respondents, RW1 was examined. The court below relying on the evidence of the petitioner and Exs.A1 to A3, which were the certified copies of the FIR, charge sheet and wound certificate, held that the accident, which resulted injuries to him, occurred due to the negligent driving of the RTC Bus bearing No. AP 11 Z 3877 by its driver.

5. Being aggrieved by the said finding APSRTC filed this appeal. Learned standing counsel appearing for APSRTC would contend that due to the parking of the lorry on the road without putting on lights indicating its parking on the road, the bus has hit the lorry, which was stationed without taking requisite precautions. There was no negligence on the part of the driver of the RTC Bus and it was only due to his careless parking of the lorry, the RTC bus has hit the lorry. He would contend however that as the owner and insurer of the lorry were not added as parties to the petition, the court below ought to have dismissed the claim petition on the ground of non-joinder of necessary parties. Since these being the contentions raised by the appellants, during the course of hearing, it became necessary to re-appreciate the evidence given by PW1 and RW1, as to the manner of accident.

6. It was deposed by PW1 that on 27.11.2007 at about 03:00 AM, while he was proceeding in an RTC Bus bearing No.AP 11 3877 from Pulivendula to Bangalore, when the said bus reached near Kanisettipally Pullerupeddavenka on Kadiri-Gorantla road at 03:00 AM, the bus has hit a stationed lorry, due to the negligent driving of the bus by its driver and such accident was the main cause for receiving of grievous injuries by him.

7. Refuting the above evidence given by PW1, APSRTC examined RW1. It was deposed by RW1 in the affidavit filed in lieu of his chief examination that as the lorry was stationed on the road without taking necessary precautions such as putting on parking lights, indicating its parking, the bus was hit to the lorry that was stationed on the road carelessly. RW1 in his cross examination admitted that on account of the focussing of lights of opposite coming vehicle, he did not observe the lorry that was stationed. He also admitted that there was fog during early hours, and on account of the focussing of lights of opposite coming vehicles, he could not observe the lorry that was stationed, and thus the bus touched the lorry, consequently the left side portion of the bus was damaged.

8. In the counter filed by the management of RTC, no plea as such as to the parking of a lorry without taking necessary precautions indicating its parking on the road, is raised. It is only for the first time during the course of examination of RW1, the management of RTC has set up a theory that as the lorry

was stationed without taking necessary precaution indicating its parking, the accident took place. The court below taking note of it, has rightly not accepted the said theory which has not been pleaded in the counter. Relying on Ex.A1 and the charge sheet, which established that due to the negligent driving of the bus by R.W.1 the bus hit the lorry, the court below held that due to the negligent driving of the bus by RW1, it was hit to a stationed lorry and on account of it, the claimant, who was travelling as a passenger in the bus, received injuries.

9. Coming to the question of quantum of compensation is concerned, PW1 in his evidence deposed that he received injuries over the face apart from a fracture injury to left tibia, a lacerated wound on the right foot, fracture to right tibula shaft, a laceration over Penis, fractures to nasal bones. Ex.A3-wound certificate is produced by him to prove the nature of injuries received by him.

10. PW2 is the Doctor, who treated the injured in Apollo hospital at Secunderbad. He has given the particulars of treatment provided to the injured and the amount incurred by him towards medicines and treatment etc. PW3 is the billing in-charge of the Apollo Hospital, Secunderabad. The learned trial judge, on close scrutiny of Ex.A3 wound certificate, which establishes that the petitioner sustained three grievous injuries and three simple injuries, has awarded Rs.24,000/- under the head of pain and suffering. The compensation so

awarded under the head of pain and suffering appears to be fair and reasonable.

11. The court below, on appreciation of the evidence given by PW2 regarding the treatment given to the petitioner for the grievous injuries he received and Ex.A5 medical bills, which the petitioner has produced for establishing the amount incurred by him towards medicines and treatment, and the evidence given by PW3 in this regard, has rightly awarded a sum of Rs.2,54,000/- under the head of medical expenditure.

12. The award under challenge indicates that no amount is awarded to the petitioner under the heads of extra nourishment and transportation charges though he is entitled to get some reasonable amount of compensation under these heads also. If reasonable compensation is awarded under these heads, the amount which he gets towards compensation goes beyond Rs.2,78,000/-. Hence, there cannot be any hesitation for this court to hold that the compensation awarded to the claimant is excessive and exorbitant.

13. The award under challenge, in my view, needs no interference in view of my finding that the appellant-APSRTC has failed to convince this court as to how the compensation awarded is excessive and exorbitant. Therefore, this appeal filed against the award, 30.07.2009, passed by the V Additional Metropolitan Sessions Judge, Mahila Court at Hyderabad, in O.P.No.1001 of 2008, fails and the same is hereby dismissed accordingly.

Accordingly, the MACMA is dismissed. As a sequel,
the miscellaneous applications, if any pending, shall stand closed.

JUSTICE J.UMA DEVI

July 31, 2018
LMV

