

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3376 OF 2005

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), by the appellant-claimant aggrieved by the order dated 04.01.2005 in M.V.O.P.No.296 of 1999 on the file of the Motor Accident Claims Tribunal-cum-District Judge, Srikakulam (for short 'the Tribunal').

2. Heard the learned counsel for appellant-claimant, the learned counsel for respondent-APSRTC and perused the record.

3. Learned counsel for the appellant-claimant would contend that the Tribunal had granted meagre compensation for the grievous and simple injuries suffered by the appellant. The Tribunal had erroneously held that there is 50% contributory negligence on the part of the appellant and ultimately prayed to enhance the compensation.

4. Learned counsel for the respondent would contend that the Tribunal had taken all the factors into consideration and granted just and reasonable compensation. The finding of the Tribunal with regard to the contributory negligence is based on evidence on record. There are no circumstances to enhance the compensation and ultimately prayed to dismiss the appeal.

5. In view of the above rival contentions, the points that arise for determination are:-

1. Whether there is 50% contributory negligence on the part of the appellant?
2. Whether the Tribunal is justified in granting compensation

of Rs.33,000/- with interest thereon?

6. POINT No.1:- To substantiate the occurrence of accident, the appellant was examined as P.W.1 and also got marked Ex.A1-FIR, Ex.A2-charge sheet and Ex.A3-MVI report. As per Ex.A1-FIR, the accident was occurred on 15.06.1996 due to the rash and negligent driving of the driver of RTC bus, i.e., R.W.1. On the other hand, R.W.1 in his evidence deposed that the accident was occurred due to the rash and negligent driving of the rider of the scooter bearing No.AAS 4598 along with two pillion riders. Admittedly, there is no driving licence to the rider of the scooter. The Tribunal had dealt with the oral evidence of P.W.1 and Exs.A1 to A3 and other circumstances of the case in detail and held that there was 50% contributory negligence on the part of the appellant. This finding is based on evidence on record. There is nothing to take a different view. Point No.1 is answered accordingly.

7. POINT No.2:- In view of the oral and documentary evidence, the appellant suffered the following two injuries:-

1. Lacerated injury of 2" x 4" x 4" on the left knee joint, bones exposed.
2. Abrasion of 4" x 4" on the right knee joint. X-ray revealed fracture to knee.

The Tribunal had determined the compensation of Rs.66,000/- on all heads taking the grievous and simple injuries and also the consequences arose therefrom. The accident occurred on 15.06.1996. The earning capabilities, etc., were well considered in awarding the compensation in this case. As there was 50% contributory negligence on the part of the appellant, the Tribunal had justified in granting compensation of Rs.33,000/- with interest @ 9% per annum to the

appellant against respondent/RTC. The appeal is devoid of merit and it is liable to be dismissed. Point No.2 is answered accordingly.

8. In the result, the appeal is dismissed.

The Miscellaneous Petitions, if any, pending shall stand closed.

No costs.

Dr. SHAMEEM AKTHER, J

Date: 20.08.2018
ssp

