

THE HONOURABLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A. No. 519 of 2011

JUDGMENT:

This appeal is filed by the erstwhile Andhra Pradesh State Road Transport Corporation (APSRTC) aggrieved by the order and decree dated 15.12.2009 passed by the Motor Accidents Claims Tribunal-cum-District Judge, Nizamabad, in O.P.No.886 of 2006, whereby the Tribunal partly allowed the O.P. awarding compensation of Rs.70,000/- with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of realization and directing the appellants herein to pay the said amount to the respondent herein jointly and severally.

2. The case of the respondent/claimant is that on 26.05.2006 at about 08.00 p.m., the claimant along with others were travelling in an auto bearing No. AP 1V 1911 from Nirmal towards Khanapur and the driver of the auto was driving the auto very slowly and cautiously and on the left side of the road. When the auto reached outskirts of Kondapur Village on Nirmal to Mancheriyal road, a bus bearing No.AP 9Z 9024 belonging to the APSRTC driven by its driver at high speed and in rash and negligent manner came on the wrong side of the road and dashed against the auto, due to which, the claimant and other inmates of the auto fell down and the front wheel of the bus ran over the claimant and the auto, as a result, the claimant sustained head injuries, fractures on forehead, right cheek bone, skull fracture, fracture of 2nd, 3rd, 4th and 5th ribs, both ears cut, face disfigured and other grievous injuries on stomach, cheek, chest and other parts of the body. Immediately, he was shifted to Government Hospital, Nirmal, and from there he

was referred to Gandhi Hospital, Secunderabad, for better treatment. He underwent surgery twice in Gandhi Hospital to his fracture injuries and steel rods, screws and plates were inserted. CT scan was taken to his head injury. He was also treated by ENT surgeon for the injuries to his ears. He spent nearly Rs.2,00,000/- for his treatment and he is still taking treatment in private hospitals. Due to the head injury, he is getting giddiness and because of other fracture injuries, he is unable to move from the bed. He cannot walk and work and attend his regular duties, as a result, his earnings were affected.

3. The appellants, who are the respondents in the O.P., filed their common written statement stating that the accident took place outside the jurisdiction of the Tribunal, as such, the Tribunal has no jurisdiction to entertain the O.P. However, it was stated that the accident was not occurred due to the rash and negligent driving of the driver of the APSRTC bus; that in fact, the accident was due to the rash and negligent driving of the driver of the auto; that the bus was being driven by its driver very slowly from Khanapur side to Nirmal; that the auto was overloaded with more than 20 passengers; that on seeing the same, the driver of the bus took the bus to the extreme left side; that even then, the auto dashed to the right side of the bus and that the petition is bad for non-joinder of the necessary parties.

4. Basing on the pleadings and after hearing the learned counsel for the parties, the following issues were settled for trial:

- (1) Whether the accident occurred due to rash and negligent driving of the RTC bus bearing No.AP-9/Z-9024 by its driver?

(2) Whether the petitioner is entitled for compensation?

If so what amount and from which of the respondents?

(3) To what relief?

5. In support of his claim, the claimant examined P.Ws.1 and 2 and got marked Exs.A.1 to A.9. On behalf of the respondents, R.W.1 was examined, but no documents were marked.

6. Now, the point that arose for consideration in this appeal is “whether the impugned award and decree suffered with any legal infirmities warranting interference under appeal.”

7. The contention of the appellants is that the trial Court erred in not appreciating the evidence of R.W.1 and in relying on the evidence of P.W.2, who is an interested witness, and also erred in relying on the FIR and charge sheet for assessing the negligence and that the petition itself is bad for non-joinder of necessary parties.

8. *Per contra*, the respondent/claimant contended that P.W.2 is an eyewitness to the accident. Since the accident occurred due to the rash and negligent driving of the driver of the APSRTC bus, the insured and the insurer of the auto are not necessary and proper parties to the petition. The award is legally valid and does not suffer with legal infirmities.

9. The injured himself was examined as P.W.1 besides examining a passenger in the offending bus as P.W.2. The evidence of P.W.2 corroborates the evidence of P.W.1 regarding the manner in which the accident took place. Though the appellants took the plea that P.W.2 is an interested witness, nothing was suggested to P.W.2 to establish any interest. More so, P.W.2 is a resident of Gollamada Village, whereas P.W.1 is a resident of Nizamabad, but both belong to the same village. Since P.W.2 was traveling in the

bus, he is a material eyewitness. Nothing was suggested to discard the evidence of P.W.2.

10. The driver of the APSRTC bus was examined as R.W.1. He deposed that when the bus reached near Kandli, an auto was coming in opposite direction; that as it was drizzling, he was driving the bus at dead slow i.e., 30 KMPH and giving dipper; that the bus crossed 80% of the bridge ahead of the road; that the driver of the auto drove the auto in rash and negligent manner; that the driver of the auto did not observe the narrow bridge and dashed against his bus, which resulted in the accident and that the capacity of the auto was only 3 + 1.

11. However, in the written statement, the respondents/appellants stated that the auto came in high speed in rash and negligent manner with over load of more than 20 passengers and on seeing the same, the driver of the bus took the bus to the extreme left side and even then, the auto dashed to the right side of the bus.

12. So, the evidence of R.W.1 contradicts the pleadings in the written statement. The evidence of R.W.1 was that after crossing 80% of the bridge, the auto was coming in opposite direction; that the driver of the auto drove the auto in a rash and negligent manner, did not observe the narrow bridge and dashed against the bus, which resulted in the accident. The same is an improvement in the evidence of R.W.1.

13. More so, the Investigating Officer, after thorough investigation, filed Ex.A.2-charge sheet finding that when the auto crossed Culvert No.75/1 situated at the outskirts of the Kondapur on Nirmal-Khanapur B.T. Road, the driver of the APSRTC bus

bearing No.AP 9Z 9024 drove the bus in rash and negligent manner with high speed and dashed to the auto, which came out from Culvert in opposite direction and dragged the auto into the culvert upto 10 feet.

14. Therefore, it clearly appears that when the auto crossed the culvert, the APSRTC bus came in opposite direction in rash and negligent manner with high speed and dashed the auto and dragged it into the culvert upto 10 feet.

15. In the facts and circumstances discussed above, the Tribunal after elaborate discussion of the evidence of P.W.1 corroborated by the evidence of P.W.2 and supported by Exs.A.1 and A.2, came to the conclusion that the accident was due to the rash and negligent driving of the driver of the APSRTC bus. The evidence of R.W.1 is an improvement. There is no force in the contention of the learned counsel for the appellants that the Tribunal erred in not appreciating the evidence of R.W.1.

16. Since the accident was due to rash and negligent driving of the driver of the APSRTC bus, the insured and insurer of the auto are not proper and necessary parties and the claim can be adjudicated even in their absence. Therefore, I find no reason or substance in the contention of the learned counsel for the appellants that the petition is bad for non-joinder of necessary parties.

17. The next contention of the learned counsel for the appellants is that the Tribunal awarded excessive compensation.

18. The evidence of the claimant - P.W.1 was corroborated by the evidence of P.W.2 and was supported by Ex.A.3-wound certificate, Exs.A.4 and A.8 - CT scan report, Exs.A.5 and A.9 - prescriptions,

Ex.A.6 - medical bills and Ex.A.7 – X-ray films. The evidence of P.W.1 was that he sustained head injury, skull fracture, fracture injury to forehead, his right side jaws fractured, his 3rd, 4th and 5th side ribs were fractured and he also sustained grievous injuries on his stomach, injuries on cheeks and chest; that he was shifted to Government Hospital, Nirmal, for treatment, and thereafter, he was shifted to Gandhi Hospital, Secunderabad, where he was operated for his fracture injuries and rods were inserted and that he spent more than Rs.4,00,000/- towards medical and incidental charges. During the course of cross examination, he denied the suggestion that he did not sustain any fracture injuries and he sustained only simple injuries.

19. A perusal of Ex.A.3-wound certificate shows that the claimant sustained two injuries (1) bleeding from left ear which is grievous in nature and (2) laceration 3 x 2 cms on right parietal region which is simple in nature. Ex.A.8-CT Scan report shows that the claimant sustained fracture of left parietal bone and calcified granuloma left high parietal.

20. The Tribunal, after considering the fact that the claimant received a grievous injury and a simple injury, even though he did not examine the doctor, who treated him to establish the injuries, awarded compensation of Rs.45,000/- towards permanent partial disability, Rs.10,000/- towards pain and suffering, Rs.10,000/- towards medical expenses and Rs.5,000/- towards transportation charges. Thus, in total, the Tribunal awarded Rs.70,000/- towards compensation directing the appellants herein to pay the said amount jointly and severally with proportionate costs and

interest @ 7.5% per annum from the date of petition till the date of realization.

21. In the facts and circumstance of the case, I am of the considered view that the Tribunal awarded the said amount based on oral and documentary evidence and that the same is neither excessive nor on higher side. Therefore, the order under challenge is legal, valid and does not suffer with any legal infirmities warranting interference by this Court.

22. In the result, the appeal is dismissed while confirming the impugned award/order and decree.

No order as to costs.

Pending miscellaneous petitions, if any, shall also stand dismissed.

Date: 30.07.2018
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JUSTICE N. BALAYOGI

