

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.597 OF 2011

JUDGMENT:

Appellants-Andhra Pradesh State Road Transport Corporation filed this appeal against the award and decree dated 18.06.2010 passed in O.P.No.244 of 2006 by the Chairman, Motor Accidents Claims' Tribunal-cum-I Additional District Judge, Nizamabad, granting compensation of Rs.8,21,000/- as against the claim of Rs.10,00,000/-, for the injuries sustained by the respondent-claimant in the accident occurred on 13.02.2006.

Brief facts of the case are that on 13.02.2006 while the claimant-injured Musuku Chinna Reddy was proceeding on Suzuki motor cycle bearing No.AP-25G-9158 along with one Baddam Narsa Reddy from Ergatla Village to Rampoor Village from the extreme left side on the road and when they reached the outskirts of Rampoor Village at about 7.30 p.m. one RTC bus bearing No.AP-9Z-9740 coming in opposite direction dashed the motorcycle, due to which the claimant sustained grievous head injuries and other multiple injuries all over the body. In said accident, Baddam Narsa Reddy also sustained grievous and multiple injuries. Immediately after the accident, the claimant-injured was shifted to Armour hospital where he was given first aid and from there he was shifted to Yashoda Hospital, Hyderabad, where he was treated as in-patient and his right leg was amputated up to knee. Hence, alleging that the injured who was aged about 19 years at the time of accident and doing agriculture and milk business and earning Rs.10,000/- month, incurred Rs.2,00,000/- towards medical expenses and extra nourishment and on account of permanent disability sustained by him, the injured was unable to do any work

and lost his livelihood, the present claim petition came to be filed before the Tribunal claiming compensation of Rs.10,00,000/-.

Respondents filed counter affidavit denying rash and negligent driving on the part of the driver of the RTC bus. They also denied age, profession and income of the injured, injuries and permanent disability claimed by the injured and pleaded that the compensation claimed is excessive and disproportionate to the injuries sustained by the injured.

Based on the above pleadings, the Tribunal framed the following issues:

- 1) Whether the accident occurred on 13.02.2006 at about 7.30 p.m. in the shivar of Rampoor (V) at a distance of 15 kms. towards north from P.S.Morthad Dist. Nizamabad due to rash and negligent driving of APSRTC bus bearing No.AP-9Z-9740 by its driver?
- 2) Whether the petitioner is entitled to compensation? If so, to what amount and from whom?
- 3) To what relief?

On behalf of the claimant-injured, PWs 1 to 3 were examined and Exs.A.1 to A.16 were got marked. On behalf of respondents, R.W.1 was examined, however, no documents were marked.

The Tribunal based on the evidence of P.W.1-injured and Exs.A.1-FIR, Ex.A.2-charge sheet held that the driver of the bus was responsible for the accident. Though the appellant/APSRTC got examined R.W.1 the driver of the bus, who deposed that there was no negligence on his part for occurrence of the accident, but the Tribunal disbelieved his version on the ground that no independent witness was examined in support of his version. Thus, held issue No.1 in favour of the claimant. Further, the Tribunal based on Exs.A.3 Medical bills issued by Seshanka hospital, Nizamabad, Exs.A.4 to A.10 showing various expenses

incurred by the injured while undergoing treatment at Yashoda Hospital, Hyderabad and Ex.A.13 disability certificate issued by the Medical Board assessing the disability suffered by the injured as 80% and based on the evidence of PWs 2 and 3, who are the doctors and treated the injured, concluded that the injured suffered 80% disability. The Tribunal while rejecting the claim of the injured that he was earning Rs.10,000/- from the occupation of agriculture and milk vending, based in Ex.A.14 pattedar pass book fixed Rs.3,500/- per month as earnings of the injured. Thus, the Tribunal granted Rs.21,000/- towards temporary loss of earnings for a period of six months. Further, the Tribunal based on the Exs.A.6 to A.9, A.10, A.15 and Ex.C.1 granted a sum of Rs.75,200/- towards medical expenditure and extra nourishment. As regards claim of the injured for Rs.1,50,000/- incurred for fixation of artificial leg based on Ex.A.12, the Tribunal rejected the same on the ground that no one was examined in support of Ex.A.12 and the oral evidence of P.W.1 does not disclose that he was fixed with artificial limb as in Ex.A.12. However, as the petitioner was amputated and there was requirement of artificial limb, the Tribunal awarded Rs.50,000/- towards artificial limb. The Tribunal also awarded Rs.10,000/- towards transportation. Further, the Tribunal by applying the multiplier of '18' and considering the income of the injured at Rs.3,500/- and assessing the loss of earning capacity @ 80%, granted Rs.6,04,800/- towards permanent partial disability resulting in loss of earning capacity. That apart, the Tribunal granted Rs.30,000/- towards disfiguration & loss of future amenities and Rs.30,000/- towards pain and sufferings. Thus, in total the Tribunal awarded Rs.8,21,000/-.

Learned counsel for the appellant would mainly contend that the Tribunal grossly erred in treating the disability of the injured at 80% when it is clear from his evidence that he is having artificial limb, which reduced his disability factor. The Tribunal failed to see that the disability certificate issued by PWs 2 and 3 is not legally valid and it does not disclose as to on what basis 80% disability was arrived. The Tribunal has not assessed the functional disability of the injured. He placed reliance on ***Raj Kumar vs. Ajay Kumar***¹. Thus, he would contend that the quantum of compensation awarded by the Tribunal is excess. The appellant is only aggrieved by the quantum of compensation awarded by taking into consideration 80% of disability and the appellant has not disputed the impugned award in other aspects.

Sri Akkem Eshwar, learned counsel for the respondent-injured, would contend that the Tribunal on the strength of evidence of P.W.1 and Ex.A.14 pattedar pass book and in the absence of any contra evidence being adduced by the appellant, held that the injured is 19 years and used to work as agriculturist. The Tribunal while awarding compensation also considered that the injured sustained multiple fracture injuries to right leg, which resulted in amputation of right leg knee, that he suffered grievous injuries on his head and other parts of the body and that he incurred Rs.2,00,000/- towards medical expenses and Rs.1,60,000/- for fixing the artificial limb. The Tribunal also considered Ex.A.13 disability certificate, which shows that the injured suffered disability 80% and Ex.A.14 pattedar pass books, which shows that the injured owns a land and thereby he was doing agricultural activities. That apart, while assessing the

¹ (2011) 1 SCC 343

disability of the injured at 80% the Tribunal also taken into consideration the oral evidence of P.Ws 2 and 3, Doctors, who treated the injured. Thus, he contends that there is no illegality or irregularity in the award passed by the Tribunal. He placed reliance on ***Prahallad Rathod vs. K.Vittal***² and ***G.Munirathnam vs. Natwarlal Odhvaji Thakkar***³.

Having heard the learned counsel, perused the record and having considered the nature of injuries and amputation of the right leg up to knee suffered by the injured and prolonged treatment taken by the injured, the 80% disability arrived by the Tribunal which is based on the evidence of PWs 2 and 3 cannot be found fault with. Further Exs.A.13 and A.10 reveal that right leg of the injured was amputated up to knee and being an agriculturist, due to amputation of the leg he could not able to do any agricultural work. Therefore, the Tribunal has rightly taken the disability as 80% and granted compensation of Rs.6,04,800/- under head 'compensation for permanent partial disability'. This Court is of the considered view that there is no illegality or irregularity in the impugned award warranting interference of this Court. Hence, the appeal is dismissed.

Miscellaneous petitions pending in this appeal, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

12th October, 2018
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² 2017 (3) ALD 472

³ 2017 (1) ALD 720