

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.No.3363 of 2008

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), by the appellants-APSRTC aggrieved by the order dated 13.04.2006 in O.P.No.2636 of 2003 on the file of the Motor Accident Claims Tribunal-cum-XXII Additional Chief Judge, Hyderabad (for short 'the Tribunal').

2. Heard the learned counsel for appellants-RTC, the learned counsel for respondent-claimant and perused the record.

3. Learned counsel for the appellants-RTC would contend that there was no rashness or negligence on the part of the driver of the RTC bus bearing No.AP9Z 8143. Further, the driver of the RTC bus was acquitted in the criminal case and the certified copy of the said judgment is marked as Ex.B1. Though there is negligence on the part of the respondent-claimant, the Tribunal held that the driver of the RTC bus was negligent in causing the injuries to the claimant, which is erroneous. He further contended that the Tribunal had not properly calculated the compensation on different heads and also granted the compensation of Rs.1,89,000/- towards loss of earnings, which is excessive. He also contended that there is calculation error in assessing 40% disability to the claimant and ultimately prayed to set aside the impugned order.

4. On the other hand, learned counsel appearing for the respondent-claimant would contend that the Tribunal had rightly assessed and awarded the compensation. There is ample

evidence on record to substantiate the rash and negligent driving on the part of the driver of the RTC bus and ultimately prayed to dismiss the appeal.

5. In view of the submissions made by both sides, the points that arise for determination are:-

1. Whether there was rash and negligent driving on the part of the driver of RTC bus bearing No.AP 9Z 8143?
2. Whether the Tribunal justified in granting compensation of Rs.8,00,000/- with interest thereon?

6. P.W.1, who is the injured in this case, deposed about the rashness and negligence on the part of the driver of RTC bus bearing No.AP 9Z 8143. The whole criminal case record is against the driver of the RTC bus. R.W.1, who is the driver of the RTC bus, deposed that the claimant was guilty of negligence in driving the scooter. R.W.1 is highly interested witness and it is not safe to give credibility to his evidence. There is no independent witness to substantiate the rash and negligent driving on the part of the scooterist, who is the claimant herein. There is criminal case record and also the evidence of P.W.1 showing the manner of accident. This cannot be discarded. The Tribunal rightly held that the driver of the RTC bus is responsible in causing the injuries to the claimant in the subject accident. Further, the judgment of the criminal Court is not binding on Tribunal. There is nothing to take a different view.

7. While dealing with the assessment and award of compensation, the Tribunal relied on the evidence of P.Ws.1 to 4 and documents marked as Ex.A3-MLC, Ex.A4-discharge card, Ex.A5-discharge summary, Ex.A6-Niyanthram Pathr of S.P.

Hospital and Ex.A7-discharge summary of All India Institute of Medical Sciences, New Delhi. As per the evidence of P.W.1, he was doing business. He claimed an amount of Rs.1,89,000/- towards loss of earnings. The subject accident occurred on 12.12.2000. The claimant took treatment in different hospitals till July, 2002. Thereafter, he had also undergone treatment about 4 ½ years. Due to the accidental injuries, he is unable to attend work and the medical evidence reveals that he has narrowing of air-way (trachea) at the level which was beyond the Trecheostomy tube. Considering the same, the Tribunal rightly awarded an amount of Rs.1,89,000/- towards loss of earnings. As per the record, the claimant suffered with paralysis of vocal card, narrow of air-way, severe deterioration in breathing, decrease in movements of left knee and ankle, left lower limb was shortened by three inches and he was treated for those injuries. There is ample evidence on record to show that the claimant incurred medical expenses of Rs.1,92,955/-. To substantiate the same, there are medical bills. Considering the same, the Tribunal granted an amount of Rs.2,00,000/- towards medical expenses. Having considered the injuries suffered by the claimant, the Tribunal granted an amount of Rs.1,10,000/- towards pain and suffering, loss of amenities including consortium. The Tribunal is justified in awarding the said amount.

8. The Tribunal took the annual income of the deceased as Rs.42,000/-. The Tribunal took disability suffered by the claimant as 40% and assessed the future loss of earnings as

Rs.16,800/- per annum. When Rs.42,000/- is taken as annual income and loss of income caused to the claimant is assessed at 40%, by applying the multiplier '16' for his age, the amount would come to only Rs.2,68,800/-, but not Rs.3,01,000/-. There is calculation error in this case. The same is required to be corrected.

9. Insofar as grant of compensation on all different heads is concerned, there is no infirmity and the compensation granted is not excess. The Tribunal also justified in granting interest @ 9% per annum. So, the total compensation payable to the claimant comes to Rs.2,00,000/- for medical expenses, Rs.1,10,000/- for pain and suffering, Rs.1,89,000/- for loss of earnings and Rs.2,68,800/- for 40% disability suffered by the claimant. In total, the claimant is entitled for an amount of Rs.7,67,800/- towards compensation.

10. Accordingly, the appeal is allowed in part modifying the order, dated 13.04.2006 passed by the Tribunal in O.P.No.2636 of 2003, reducing the compensation from Rs.8,00,000/- to Rs.7,67,800/-. The other directions given by the Tribunal remain unaltered.

The Miscellaneous Petitions, if any, pending shall stand closed. No costs.

Dr. SHAMEEM AKTHER, J

Date: 13.08.2018
ssp