

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.Nos.3339 & 3489 of 2005

COMMON JUDGMENT:-

Since the order under challenge in both these appeals is one and the same, both these appeals are being disposed of by this common judgment.

2. Challenging the order dated 24.06.2005 passed in O.P.No.33 of 2001 by the Motor Accident Claims Tribunal-cum-V Additional District Judge, Ranga Reddy District ('the Tribunal', for brevity), the APSRTC (now TSRTC) preferred M.A.C.M.A.No.3339 of 2005 seeking to set aside the impugned order and the claimant preferred M.A.C.M.A.No.3489 of 2005 seeking enhancement of compensation.

3. Heard the learned counsel for both sides and perused the record. For clarity and convenience, the parties will be hereinafter referred to as per their array before the Tribunal.

4. The learned counsel for the claimant would contend that the Tribunal had granted the compensation of Rs.3,50,000/- against the claim of Rs.6,00,000/-. The claimant suffered amputation to the left leg and other grievous injuries. The Tribunal took the disability of the claimant at 60% and also took the income of the claimant at Rs.2,000/- per month. The claimant was working as Sales Executive in Venus Industrial Products and earning Rs.5,600/- per month. To substantiate the same, P.W.2-employer was examined and Ex.A11-salary certificate of the claimant was marked. He further contended that due to the

accidental injuries, damage was caused to urethra and on other vital organs including eye. The claimant is taking treatment in different hospitals. The Tribunal granted lesser amount towards medical expenses and prayed to enhance the same.

5. On the other hand, the learned Standing Counsel for the RTC would contend that there was contributory negligence on the part of the driver of the auto. The Tribunal erroneously held that the subject accident occurred and injuries were caused, due to the rash and negligent driving of the driver of RTC bus bearing No.AP 10Z 5989. The Tribunal granted compensation of Rs.3,50,000/-, which is excessive and ultimately prayed to set aside the impugned order passed against the RTC.

6. In view of the above rival contentions, the points that arise for determination in both these appeals are as follows:-

- 1) Whether there is rash and negligent driving on the part of the driver of RTC bus bearing No.AP 10Z 5989?
- 2) Whether the impugned order passed against the RTC is liable to be set aside?
- 3) Whether the claimant is entitled for enhancement of compensation ?

7. POINT Nos.1 and 2 :- The specific case of the learned Standing Counsel for the RTC is that the accident occurred on 24.05.2000 was due to the rash and negligent driving on the part of the driver of auto bearing No.APHV 2963. Though the learned Standing Counsel contended that there was negligence on the part of the driver of the auto, no witness including the driver of the RTC bus was examined.

8. While dealing with the subject matter of the claim, the Tribunal had elaborately dealt with the evidence of P.W.1, who is the injured in this case, and also Ex.A1-certified copy of FIR, Ex.A2-certified copy of charge sheet and medical records produced before the Court and held that there was rash and negligent driving on the part of the driver of the RTC bus. The entire criminal case is against the driver of the RTC bus. There is nothing to take a different view. Therefore, the finding of the Tribunal cannot be faulted with regard to the occurrence of accident as well as award of compensation against the RTC. Hence, both the points answered against the RTC.

9. POINT No.3:- P.W.3-Dr.P.Chandra Shekar deposed that the claimant suffered the following injuries:-

1. Left eye swelling
2. Chest injury
3. Urethral injury
4. Grade-III open infected fracture both bones which was four days old injury

There is also evidence of P.W.4-Dr.N.Surender Reddy with regard to the treatment taken by the claimant. There is also specific mention with regard to Ex.A10-disability certificate that the claimant suffered amputation to the left leg above the knee and operations were conducted on 28.05.2000 and 07.06.2000. There is also evidence with regard to the treatment rendered for the injuries indicated above. As per Ex.10-disability certificate, the claimant suffered 60% disability. P.W.3 deposed about the same. Considering the same, the Tribunal held that the claimant suffered 60% disability. The Tribunal took the monthly income of the

claimant as Rs.2,000/- and granted an amount of Rs.2,44,800/- for 60% disability suffered by the claimant. Ex.A11-salary certificate shows that the claimant is a private employee. The evidence of P.W.2 shows that the claimant is working as Sales Executive in Venus Industrial Products and earning Rs.5,600/- per month. The Tribunal had not considered the same by assigning reason. P.W.2 is not competent to issue Ex.A11-salary certificate and discarded his evidence. Further, the claimant has not filed any certificate to show his educational qualifications to believe his employment as contended.

11. The accident occurred on 24.05.2000. Hence, the cost of living and expenses prevailing then are required to be taken into consideration to assess and award the compensation payable to the claimant. In the circumstances of the case, as the claimant was a private employee, his earnings can be taken as Rs.2,500/- per month including future hike in the salary, which comes to Rs.30,000/- per annum. After applying multiplier '18', the loss of future earnings comes to Rs.5,40,000/- and for disability of 60%, the same comes to Rs.3,24,000/-. The claimant is entitled for the said amount towards loss of future earnings.

12. The Tribunal had granted Rs.55,000/- towards medical expenses relying on the medical record. Though the claimant contended that he spent Rs.80,000/- and above on medicines, he did not file the receipts to show that expenditure. So the grant of Rs.55,000/- towards medical expenses cannot be faulted. The Tribunal granted Rs.40,000/- for the amputation and injury to urethra, Rs.3,000/- towards attendant charges, Rs.2,000/- towards

conveyance charges and Rs.5,200/- towards extra nourishment. There is justification in granting so. No interference is warranted.

13. Since there is amputation to the left leg, in addition to the loss of future earnings, he is granted Rs.1,00,000/- towards loss of future amenities, etc. In all, the claimant is entitled for compensation of Rs.5,29,200/-. The point is answered accordingly.

14. In the result, M.A.C.M.A.No.3489 of 2005 filed by the claimant is allowed in part, modifying the order, dated 24.06.2005, passed in O.P.No.33 of 2001, by the Tribunal, enhancing the compensation from Rs.3,50,000/- to Rs.5,29,200/- with interest at the rate of 7.5% per annum on the enhanced amount of compensation from the date of petition till the date of deposit. On deposit of the compensation, the claimant is permitted to withdraw the entire amount along with the interest accrued thereon. The other terms of the Order under challenge remain unaltered. Consequently, M.A.C.M.A.No.3339 of 2005 filed by RTC is dismissed.

Miscellaneous petitions, if any, pending in both these appeals, stand closed. No costs.

Dr. SHAMEEM AKTHER, J

Date: 02.08.2018
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