

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A. No. 618 OF 2011

JUDGMENT:

The appellants, who are the officials of the APSRTC/ respondents 1 to 3, filed this appeal against the award and decree dated 15.09.2010 passed in M.O.P.No.136 of 2007 by the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Visakhapatnam, granting compensation of Rs.5,63,000/- against the claim of Rs.6 lakhs for the injuries sustained by the 1st respondent/claimant in the motor accident occurred on 08.11.2006.

2. The claimant filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 read with Rule 455 of the Andhra Pradesh Motor Vehicles Rules, 1989, alleging that on 08.11.2006 morning he started from Narsipatnam to go to Gajuwaka on his personal work and after completion of the same, he boarded the RTC bus bearing registration No.AP11Z 4288 at Gajuwaka at about 4.00 p.m. to go to Narsipatnam. At about 5.00 p.m., when the bus reached near Sri Venkata Kanakamahalakshmi Petrol bunk on NH5 road at Anakapalle, the driver of the bus swerved the bus to left and thereafter to right in a rash and negligent manner. On account of the said swerving in a zigzag manner, the lorry which was coming in the opposite direction dashed the rear right side of the bus

and thereby the claimant who was sitting by the side of the window in the last seat sustained crush injury to his right hand. The right side rear window and the supporting rods of the bus were damaged. The accident occurred due to rash and negligent driving of the driver of the RTC bus. A case in Crime No.265 of 2006 was registered by the Anakapalli police under Section 338 IPC against the driver of the offending RTC bus.

He claimed that he was doing business and also working as an Agent in Sri Ramalinga Finance Corporation and was earning Rs.8,000/- per month. He was also paid Rs.2,000/- per month towards house rent and electricity and he worked till 08.11.2006. Due to the accident, he lost his job and income.

3. The appellants 1 and 3 were called absent and remained *ex parte* before the Tribunal. The right of respondent No.4 to file counter was forfeited.

4. The 2nd appellant filed counter denying the averments of the claim petition and specifically contending that the claimant was on the back seat of the bus and he was sleeping by keeping his right hand outside of the window and due to his negligence, the accident occurred and that his right hand forearm was amputated, and as such, the accident occurred purely due to the negligence of the claimant only. The

compensation claimed is excessive and on high side and denied its liability to pay the compensation.

5. Based on the above pleadings, the Tribunal settled the following issues for trial:

- 1) Whether the accident occurred due to rash and negligent driving of driver of RTC Bus bearing registration No.AP11Z 4288?
- 2) Whether the petitioner is entitled to compensation, if so, to what amount?
- 3) To what relief?

6. During the course of trial, the 1st respondent/claimant himself was examined as PW1, got examined PWs 2 and 3 and got marked Exs.A.1 to A.8 and Exs.X.1 and X.2. On behalf of the 2nd appellant, RW1 was examined and no documents were marked.

7. The Tribunal, based on the evidence of PW1 and PW3 and Ex.X.2, disbelieved the claim of the 1st respondent that he used to earn Rs.8,000/- per month, but however, it has taken the notional income of the 1st respondent as Rs.3,000/- per month. Accordingly, the annual income of the 1st respondent was taken as Rs.36,000/- and as per decision of Hon'ble Apex Court in *Sarla Verma and others Vs. Delhi Transport Corporation and another*¹, the multiplier "11" was taken as the age of the 1st respondent was 55 years at the

¹ (2009) 6 SCC 121

time of accident. The Tribunal assessed the loss of earnings of the 1st respondent as Rs.3,96,000/-. In addition to the same, the Tribunal granted Rs.25,000/- for grievous injury. In the accident, the 1st respondent sustained 60% disability which is permanent in nature as per the evidence of PW2 and Ex.A.7. The Tribunal has awarded an amount of Rs.1 lakh towards disability and an amount of Rs.42,000/- was awarded towards medical expenses as per Ex.A.5 Medical bills, which was incurred by the 1st respondent. In total, the Tribunal awarded Rs.5,63,000/- with costs and interest @ 7.5% per annum.

8. Aggrieved by the same, the appellants/APSRTC filed the present appeal.

9. Sri S.V.Ramana, learned counsel for the appellants, would contend that the Tribunal failed to see that the accident occurred due to the negligence of the claimant but not due to the rash and negligent driving of the driver of the RTC bus. In the accident, the 1st respondent received the injury leading to amputation of right upper forearm due to his negligence in keeping the hand outside the bus. The Tribunal ought to have applied the principle of '*res ipsa loquitur*' to the facts of the present case and denied the claim of the 1st respondent. He would further contend that the Tribunal grossly erred in taking the disability of appellant as 60% and further granting Rs.25,000/- towards grievous injury,

Rs.1 lakh towards disability, Rs.42,000/- towards medical expenses and Rs.3,36,000/- towards loss of earnings, without there being any legal evidence in support of his claim. He would further contend that due to contributory negligence and the claim is not supported by any evidence, the Tribunal ought not to have granted compensation of Rs.5,63,000/-, which is excessive and needs to be reduced.

10. The learned counsel for the 1st respondent/claimant states that there is no illegality in granting compensation by the Tribunal. The Tribunal has granted just and fair compensation.

11. In the facts and circumstances of the case and in considered view of this Court, the Tribunal has rightly come to the conclusion that the accident had occurred due to rash and negligent driving of the driver of the RTC bus, based on the evidence of PW1 and documents Exs.A.1 to A.4. The said finding could not be found fault with in the absence of contrary evidence. In the accident, the claimant suffered 60% disability as per the evidence of PW2 and Exs.A.7 and A.8.

12. The Tribunal has rightly taken the income of the claimant as Rs.3,000/-, disbelieving the evidence of PW3 and the document Ex.X.2 – salary certificate in support of his claim that he was earning Rs.8,000/- per month. The Tribunal rightly arrived the annual income of the claimant as Rs.36,000/- and applied the multiplier ‘11’ as the age of the

claimant is 55 years as per *Sarla Verma's case* (1 supra) and the annual earnings of the claimant was assessed as Rs.3,96,000/-. The Tribunal has rightly granted Rs.42,000/- towards medical expenses. But, the Tribunal erred in granting Rs.25,000/- towards grievous injury besides granting compensation for 60% disability. Further, granting of Rs.3,96,000/- towards loss of earnings appears to be wrongly calculated and arrived by the Tribunal. Loss of earnings could be assessed at Rs.2,37,600/- ($\text{Rs.36,000/-} \times 11 \times 60/100$) and consequently the claimant is not entitled for Rs.1 lakh towards disability. But, however, the claimant is entitled for Rs.1 lakh towards loss of amenities as his right hand is amputated in the accident, as per the evidence of PW2 and Ex.A.7. In all, the 1st respondent/ claimant is entitled for Rs.3,79,600/- (Rs.2,37,600/- towards loss of earnings + Rs.42,000/- towards medical expenses + Rs.1 lakh towards loss of amenities).

13. The Tribunal has rightly granted interest at 7.5% per annum based on the prevailing bank interest rates and the interest could not be said to be on higher side. Hence, the rate of interest as granted by the Tribunal is hereby confirmed.

14. Accordingly, the appeal is partly allowed to the extent indicated above. No order as to costs.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

JUSTICE M.GANGA RAO

16-11-2018
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