

**THE HONOURABLE SRI JUSTICE N. BALAYOGI****M.A.C.M.A No.682 of 2009****JUDGMENT:**

The appellant/respondent, aggrieved by the award and decree dated 06.07.2006 in M.V.O.P.No.3068 of 2004, passed by the XXII Additional Chief Judge-cum-Before the Motor Accidents Claims Tribunal, (for short, Tribunal) City Criminal Court at Hyderabad, preferred this appeal, allowing the claim petition in part and directing the appellant to pay a sum of Rs.97,000/- together with interest at 7.5% per annum from the date of filing of the petition till deposit of the amount for the injuries sustained in motor accident occurred on 23.8.2004.

2. The main contention of the appellant is that the Tribunal went wrong in holding that the accident occurred only due to rash and negligent driving of the driver of the bus butd ought to have held that the injured too was equally responsible for the accident. It is further contended that the Tribunal erred in conclusion that the injured developed some neuro problem without examined by the concerned doctor and awarded lumpsum amount. It is further contended that the Tribunal is wrong in awarding huge amount of Rs.40,000/- towards pain and suffering, Rs.25,000/- towards physical disability, even in the absence of any evidence in regard to disability and further went wrong in awarding an amount of Rs.10,000/- towards transportation charges.

3. For the sake of convenience, the parties will hereinafter be referred to as they were arrayed before the trial Court.

4. The claim of the respondent / claimant in brief are as follows:

The claimant / petitioner is a police constable. While so, on 23.8.2004, he was standing at NTR cross roads, Vikarabad in connection with his duty. At that time, RTC bus bearing No.AP 11Z 1492 of Tandur Depot came with high speed in rash and negligent manner and dashed the petitioner. That due to impact, petitioner fell down on the road and the RTC bus ran over the right leg of the petitioner and caused injury. He also sustained multiple injuries all over the body. Thereafter, he was immediately shifted to Nizam's Institute of Medical Sciences, Hyderabad, for treatment. The petitioner had spent lot of money for medical treatment, and he is still undergoing treatment. He is suffering from pain and mental agony and not in a position to do any work as he was doing prior to accident. He was aged about 42 years, at the time of accident.

5. The respondent / appellant filed counter-affidavit and contended that the petitioner has to prove his age, income and his contribution to the family. There is no negligence on the part of the driver of the RTC bus.

6. The Tribunal, having considered the pleadings of both parties, settled the following issues for trial :

(i). Whether the accident took place on 23.8.2004 at 9.00 hours due to rash and negligent driving of APSRTC bus bearing No.AP 11Z 1492 by its driver?

(ii). Whether the petitioner is entitled to claim compensation from the respondents, if so, what amount?

(iii). To what relief?

7. That, on behalf of petitioner, PWs1 and 2 are examined.  
Exs.A1 to A13 are marked.

8. Now, the point that arise for determination is:

*Whether the conclusion and finding and the award passed by the Tribunal suffer from any legal infirmities warranting interference?*

Learned Counsel for the appellant contended that the Tribunal went wrong in concluding that the accident occurred due to rash and negligent driving of the APSRTC bus driver alone when there is equal responsible on the part of PW.1. Further the Tribunal concluded that the claimant developed neuro problem and awarding compensation on different heads is erroneous.

On the other hand, the respondent / claimant contended that having considering the evidence of PWs1 and 2 and documentary evidence under Exs.A1 to A13 rightly came to the conclusion and awarded just compensation. It do not suffer from any legal infirmities warranting interference.

The claimant himself is examined as PW.1 whose evidence is that since 21 years, he is working in the Police Department. That for the last three years, he is unable to attend duties. Even the Doctor also do not know that from what time PW1 is suffering from nervous weakness. He is undergoing treatment in Nizam's Institute of Medical Sciences, Hyderabad, under Neuro Physician and the suggestion is that he is suffering from nervous weakness for about more than ten years and is taking treatment for the same from various doctors. The consistence evidence of PW.1 is that on

23.8.2004 at about 9.00 hours, he was standing at NTR cross roads at Vikarabad to attend duty. At that time, one APSRTC bus bearing No.AP11 Z 1492 of Tandur Depot came with high speed in rash and negligent manner and dashed him. Due to which, he fell down on the road and the bus driver drove the bus on the right leg of PW1, due to which his right leg was crushed under backside tyre of the APSRTC bus and received multiple bleeding injuries all over the body. During the cross-examination, it is stated that he has been working in the Police Department since 21 years and it is not true to suggest that PW.1 alone is responsible for the accident and that there is no negligence on the part of driver of the Corporation bus. Further, it is not true to suggest that PW.1 is not in a position to make a move on the road and to observe the road traffic and he lost balance, as he is a nervous patient and so his right leg little finger came under the left rear wheels of the bus. From the above version of PW.1, it is clear that the involvement of the APSRTC bus bearing No.AP-11-Z-1492 of Tandur Depot is not disputed.

9. R.W.1 is the driver of the APSRTC bus bearing No.AP-11-Z-1492. He stated that on 23.8.2004 he was on duty with the said bus and proceeded from Tandur to Hyderabad vice versa. That on that day, he completed his duty and no accident occurred with his bus. The evidence of RW.1 is completely contrary to the pleadings of the respondent in the counter and also the grounds of appeal. It is not only negligence of driver of the bus, but there is also negligence on the part of PW.1.

10. Now, coming to the documentary evidence, Ex.A1 is the copy of the FIR wherein it was clearly asserted that while PW1 AR.Head Constable 667 was on duty at NRT cross roads, APSRTC bus bearing No.AP-11-Z-1492 came with high speed in rash and negligent manner and dashed PW.1 and he sustained bleeding injuries on his right leg. The tyre of the bus ran over the right leg of PW.1. The Investigating Officer, after thorough investigation, filed charge-sheet under Ex.A2 against RW.1 finding that RW.1 being the driver of the APSRTC bus bearing No.AP-11-Z-1492 drove the bus in rash and negligent manner with high speed and dashed PW.1 and the PW.1 sustained bleeding injuries to his right leg palm. The Tribunal having considering the evidence of PW1 supported by Exs.A1 and A2 and rebuttal evidence of RW.1, came to right conclusion that the accident occurred due to rash and negligent driving of the driver of APSRTC bus bearing No.AP-11-Z-1492 on 23.8.2004 at 9.00 hours. Absolutely, there is no iota of evidence to support the evidence on the part of PW.1.

11. In the absence of any such rebuttal evidence, I am of the considered opinion that the finding of the Tribunal that rash and negligent driving of the driver of APSRTC bus is legally valid and do not suffer from legal infirmities warranting interference.

12. With regard to injuries, there is evidence of PW.1-injured and PW.2-Assistant Professor in Nizam's Institute of Medical Sciences, Hyderabad, besides documentary evidence under Exs.A3 to A13. The evidence of PW.1 is that the accident occurred on 23.8.2004 at

about 9.00 hours, the bus bearing No.AP-11-Z-1492 came with high speed in rash and negligent manner and dashed PW.1, due to which he fell down on the road and the said bus driver drove the bus on his right leg, due to which his right leg was crushed under backside tyre of the APSRTC bus and he also received multiple bleeding injuries all over the body. Immediately, he was shifted to Nizam's Institute of Medical Sciences, Hyderabad, where he was treated as inpatient for a period of eight days, he was operated and K wire fixed, Debridement, SSG done harvested from the right thigh. Then the evidence of PW.2-Assistant Professor is that PW.1 admitted in the Hospital on 23.8.2004. He treated PW.1 to the injury to right foot. He noticed loss of skin over the right leg foot and also noted fractures of 2, 4 and 5 Metatarsals. Ex.A3 is the medico legal patient record which shows that PW.1 age is about 43 years, was admitted and examined on 23.8.2004 with O.P. No.40801279 at 6.30p.m. It is noted in injury certificate that PW.1 has (1) abrasion over right knee, (2) avulsion injury right foot with exposing tendons and (3) head injury. Finally, he opined it is grievous injury. Ex.A4 is the discharge record of the hospital under Plastic Surgery Department, which shows that PW.1 admitted in the hospital on 23.8.2004 and discharged from the hospital on 30.8.2004 which is corroborated by PW.2 on 24.8.2004; that they have taken PW.1 to Orthopaedic Surgeon and treated fractures by removing the dead skin from the right foot by collecting the skin from right thigh and did skin grafting. PW.1 was in the hospital till 30.8.2004 which shows the treatment of PW.1, surgery on 24.8.2004 and consequent grafting as per corroborate evidence of PW.2 and Ex.A4. During the

cross-examination PW.2 stated that Dr. Babu Rao is his assistant. He further stated that doctors names will be mentioned on the discharge card irrespective of the concerned doctor name who treated the patient ie., team of the Unit will be mentioned. PW.2 further stated that anybody can sign on the discharge card, among the Unit on behalf of the doctor who treated the patient. Ex.A4 further reveals that abnormal involuntary movement of limbs, Right LL:Avulsed degloving injury of right dorsum of the foot which was sutured laterally underkined skin flap upto 3cm. Of wound size 7x3cm.

13. Besides the evidence of PWs.1 and 2, Exs.A3 and A4, there is Ex.A5-clinical summary (discharge record under Neurology Department-Unit-I) of PW.1, which goes to show that PW.1 was admitted on 13.9.2004 and discharged on 18.9.2004. PW.1 corroborates Ex.A5 wherein he has also deposed that he was admitted in the hospital on 13.9.2004 and discharged on 18.9.4004. After discharge from the hospital, again he took treatment for his injuries and fractures in Nizam's Institute of Medical Sciences, Hyderabad and further doctor advised to take continuous treatment. These facts are proved by Ex.A5 wherein it is clearly certified that PW.1 presented with involuntary movements of limbs since six years, reduced performance in daily activities since four years and reduced facial expression since four years, developed involuntary movements of hand-slow rhythmic movements of both end without his knowledge during his daily activities. Also noticed gradual change in his handwriting; these symptoms gradually affecting his

daily activities. He requires help of someone while performing his daily activities. He is also having sleep disturbance, shortness of sleep. The same facts were also recorded by the Court when PW.1 was produced for cross-examination on 01-12-2005. The Court observed demeanour of the witness and noted as under:

“(Witness appeared before this court on 1-12-2005. In this particular case, I am of the opinion that it requires to note down the physical movements of the witness as his physical movements appeared to be not natural, abnormal and unstable in the movement of the body, particularly at waist portion and moving frequently towards front and back and his looks are appeared to be not stable and moving towards all sides which appeared to be defective and not as like natural looks and his total appearance appearing as unsound mind but is able to talk properly. In my opinion that it is not any pretension and opined that it is some nervous defect- in the total body of the witness. However, this court recorded the condition of the witness without prejudice to the rights of the parties.)”

14. Further, when Ex.A5 read with observations of the court on 01.12.2005 will clearly indicates that the movements of the PW.1 in the open court are not natural, they are abnormal, unstable in the movement of the body, particularly at waist portion and moving frequently towards front and back and his looks are appeared to be not stable and moving towards all sides which appeared to be defective and not as like natural looks and his total appearance appearing as unsound mind but is able to talk properly. Doctor also certified Ex.A5 that there is involuntary movements of limbs since six years and reduced performance in daily activities since four years, developed involuntary movements of hand-slow rhythmic

movements of both end without his knowledge during his daily activities and there is also gradual change in his handwriting which generally affects daily activities of the PW.1 and therefore, he became disabled permanently and the doctor while discharging PW.1 advised continuous treatment.

15. In view of the above evidence of PWs1 and 2 and also Ex.A5, there is substance in the contention of the appellant that the Court went wrong that the respondent developed some neuro problem and observed that no doctor was examined in his behalf and in the absence of medical evidence, taking into consideration the physical disability of the petitioner, the Court awarded some lump sum amount, instead of assessing the percentage of disability.

16. In the facts and circumstances of the case, I am of the considered view that the evidence of PWs.1 and 2 corroborated and supported by Exs.A3, A4 and A5 established that PW1 sustained degloving injury over right dorsum of foot and fracture of Metatarsals. Both injuries are grievous in nature and he developed neuro problem. Therefore, the Tribunal awarded compensation of Rs.40,000/- towards pain and suffering which is meagre and just compensation, in such type of patient, who developed involuntary movements of limbs since six years and reduced performance in daily activities since four years, developed involuntary movements of hand-slow rhythmic movements of both end without his knowledge during his daily activities of the petitioner. Further, for the disability, the Tribunal, relying on the evidence of PW.2 basing on Ex.A5-

summary record, observed that PW.1 appeared for cross-examination on 01-12-2005 and came to conclusion that physical disability of involuntary movements of the limbs, awarded an amount of Rs.25,000/- towards physical disability, under general damages. With regard to loss of earnings, the Tribunal considered that he was in-patient for eight days as per Ex.A4-discharge record and the evidence of PW.2 for treatment of fractures of 2, 4 and 5 Metatarsals and the PW.2(doctor) treated and advised that the patient must have at least bed rest for a period of one month and in view of the fact that there is no earning. Thus, considering the monthly salary of PW.1 as Rs.7,000/- per month, the Tribunal awarded an amount of Rs.7,000/- towards loss of earnings.

17. Further, towards the medical expenses, there is evidence of PW.1 wherein he stated that he incurred heavy expenditure for his treatment. Exs.A6 and A7 are the estimation certificate and medical bills issued by the Nizam's Institute of Medical Sciences, Hyderabad. Exs.A6 - for Rs.25,000/- and A7-receipts for purchase of medicines and A8 are the prescriptions and further A9 is Out Patient Medical Record for treatment of the PW.1. As per Ex.A4, petitioner took treatment in the hospital (under Plastic Surgery Department) from 23.8.2004 to 30.8.2004 and as per Ex.A5-discharge record (under Neurology Department-Unit-I), petitioner further took treatment from 13.9.2004 to 18.9.2004. Further, as per Ex.A3-Medico Legal Patient Record, x-rays were taken. As per Exs.A8 and A9, medical bills pertain to neuro problem and accordingly, the Tribunal inclined to award the amount incurred on

medical bills. Ex.A7 are also bunch of medical bills and certain medicines were purchased. The value of medicines purchased comes to Rs.10,000/- including registration charges. Therefore, the Tribunal awarded Rs.10,000/- as incurred by him under Ex.A7.

18. Regarding transportation charges, the Tribunal while considering that the accident occurred at Vikarabad and the petitioner was shifted to Government Civil Hospital, Vikarabad and from there to Nizam's Institute of Medical Sciences, Hyderabad, for treatment, since PW.1 sustained over right dorsum of foot, the petitioner must have used 4 wheeler for transportation to hospital and from hospital back to home. Taking into consideration the cost of transportation charges, the Tribunal rightly awarded Rs.10,000/- towards transportation charges which amount is just and reasonable and legal.

19. Apart from that, the Tribunal also awarded Rs.5,000/- towards extra nourishment which is also quite reasonable and in total awarded an amount of Rs.97,000/-.

20. Hence, considering the over all evidence ie., oral and documentary evidence of the record, I am of the considered view that the finding of the Tribunal is based on oral and documentary evidence and the amount of compensation awarded is just compensation, there is no abnormal finding / conclusion of the Tribunal which is legal and valid in awarding Rs.97,000/- towards compensation to PW.1 and do not warrant interference.

21. In the result, the appeal is dismissed with costs while confirming the award and decree dated 06.07.2006 in M.V.O.P.No.3068 of 2004, passed by the XXII Additional Chief Judge-cum-Before the Motor Accidents Claims Tribunal, City Criminal Court at Hyderabad. Appellant is directed to deposit the compensation amount after deducting the amount, if any, already paid, within a period of 30 days from the date of receipt of a copy of this judgment. On such deposit, the claimant/petitioner is permitted to withdraw the same.

22. Miscellaneous petition/s pending consideration, if any in the appeal shall stand closed in consequence.

JUSTICE N.BALAYOGI

Dated:25-01-2018

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THE HONOURABLE SRI JUSTICE N. BALAYOGI



M.A.C.M.A No.682 of 2009

DATED: 25-1-2018

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