

THE HON'BLE SRI JUSTICE N.BALAYOGI

M.A. C.M.A. No.2952 of 2009

JUDGMENT :

The appellant – respondent/RTC aggrieved by the Award and Decree dated 6.11.2007 in O.P.No.745 of 2007 on the file of the Motor Vehicle Accident Claims Tribunal-cum-VI Additional District Judge, (Fast Track Court) at Vikarabad, Rangareddy District, awarding a sum of Rs.1,00,000/- with interest at 7.5% per annum from the date of petition till the date of realisation, preferred this appeal.

2. The contention of the appellant is that (i) the Tribunal erred in coming to the conclusion that the accident occurred only due to rash and negligent driving of the driver of the bus and it ought to have held that the injured too was equally responsible for the accident; and (ii) the Tribunal ought to have applied the principle of *res ipsa loquitur* to the facts of the present case. The awarding of Rs.1,00,000/- is without any basis and the Tribunal failed to see that no one has been examined to prove the income and medical bills.

3. The case of the respondent/claimant in brief is as follows :

On 26.4.2005 at about 1.30 PM while the petitioner was standing at Chilkoor Bus stop, then APSRTC bus bearing No.AEZ 5961 while taking reverse the driver drove the bus in a rash and negligent manner and run over on the foot of the petitioner causing severe injury i.e., fracture of leg and other multiple injuries all over the body.

Immediately, he was shifted to Osmania General Hospital, Hyderabad, thereafter took treatment in Challa Hospital, Ameerpet.

4. The petitioner was 20 years old and working as a watchman in Suryateja Private Industries Limited and was earning Rs.2,800/- per month and contributing the same for the maintenance of the family.

5. The appellant/respondent filed counter/written statement contending that no accident took place with bus No.AEZ 5961 on 26.4.2005. The petitioner has not shown his age and income. The petitioner has to prove that he sustained fracture to both legs and other multiplier injuries and became permanently disabled. The amount claimed is not tenable.

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

1. Whether accident was occurred due to rash and negligent driving of the RTC bus bearing No.AEZ 5961 by its Driver?
2. Whether the petitioner sustained injuries in the accident?
3. Whether the petitioner entitled to any compensation, if so, what quantum and what is the liability of the Respondent?
4. To what relief?

7. In support of the petitioner's contention, P.Ws.1 and 2 were examined and Exs.A1 to A8 were got marked. On behalf of the respondent, R.W.1 was examined and no documents were got marked.

8. Now the point that arises for determination is :

- (i) Whether there is any negligence equally on the part of the claimant?
- (ii) Whether the Award for Rs.1,00,000/- is suffering from any legal infirmities warranting interference?

9. The contention of the appellant is that the claimant is also responsible for the accident.

10. *Per contra*, the respondent/claimant contended that the material on record established the negligence on the part of the driver of the RTC alone.

11. The claimant himself is examined as P.W.1, besides examining the Doctor as P.W.2. The driver of the bus is examined as R.W.1. It is not in dispute that the RTC bus bearing No.AEZ 5961 was involved in the accident occurred on 26.4.2005 at 1.30 PM at Chilkoor Bus Stop while taking the bus reverse. P.W.1 sustained crush injury to the left foot with compound dislocation of mid tarsan joints.

12. The consistent evidence of P.W.1 is that on 26.4.2005 at about 1.30 PM while he was standing at Chilkoor Bus stop, while taking the RTC bus bearing No.AEZ 5961 reverse, the driver drove the vehicle in a rash and negligent manner and run over the foot of the petitioner, due to which he sustained severe injury to the left leg which was fractured and sustained other multiple injuries all over the body. P.W.1 was not cross-examined by the respondent/RTC. To rebut the evidence of P.W.1, the driver of the said bus, at the relevant point of time, Mohd.Rafuddin is

examined as R.W.1. His evidence is that bus bearing No.AEZ 5961 was stopped at the Chilkoor bus stop, then P.W.1 first boarded the bus, then after R.W.1 moved the bus, all of a sudden P.W.1 by opening the door jumped from the bus, fell down and sustained injury. Accordingly, the accident is due to negligence of the petitioner, but not due to negligence of the driver of the bus. From the evidence of P.W.1 read with the evidence of R.W.1 it is a fact that while the RTC bus bearing No.AEZ 5961 was on use and when the driver - R.W.1 moved the bus, the accident occurred and it is not in dispute. During the cross-examination, R.W.1 admitted that he was the driver of the bus bearing No.AEZ 5961 at the time of the accident. The said bus was having doors in front side and also back side and it has opened door. He further admitted that *“it is true that what I stated in my chief-examination affidavit that the petitioner Suresh opened the door of the bus is not correct”*. There is a well suggestion to R.W.1, though denied, that the petitioner on the date of the accident boarded his bus at Mehdipatnam and he got down at Chilkoor and at the time of the accident, the petitioner after getting down from the bus at Chilkoor, while he was standing on the road, without observing the petitioner, when he took the bus, dashed to the petitioner and caused the accident.

13. Now, coming to the F.I.R. – Ex.A1, the complainant is Sri P.Vittal Reddy, PC 1961 with regard to the accident on 26.4.2005 at 13.30 hours. He clearly asserted that while he was on bandobust duty on 26.4.2005 at 1.30 PM near Chilkoor Balaji temple, meanwhile RTC bus bearing No.AEZ 5961 driven in a rash and negligent manner at the bus

stand near the temple, while taking reverse, the bus front tyre run over the leg of the petitioner and he sustained grievous injury. Under Ex.A2 – charge-sheet the investigating officer opined that on 26.4.2005 at about 13.30 hours when P.W.1 was present at the bus bay in front of temple, at that time, R.W.1 – driver of RTC bus bearing No.AEZ 5961 of Rajendranagar was taking the bus reverse in a rash and negligent manner without observing the passengers, as a result, the front tyre of the bus run over the left leg of Suresh – P.W.1 causing severe bleeding injury. In Ex.A3 – scene of observation report, the mediators clearly noted that at the scene of offence, RTC bus bearing No.AEZ 5961 was stationed at the place of bus stand and they observed blood stains on the front tyre and also blood stains on the earth near the front tyre indicating occurrence of the accident. In Ex.A4 – M.L.C. report against the column ‘brief history of the case’ it was noted that the patient alleged to have RTA at Chilkoor at 1.30 PM on 26.4.2005 and was examined in the Hospital at 3.35 PM.

14. Having considered the evidence of P.W.1 and admission of R.W.1 - the driver, supported by Ex.A1- F.I.R., Ex.A2 – charge-sheet, Ex.A3 – Scene of observation report, Ex.A4 – MLC report, it is clearly established that the complainant is none other than Police Constable who was on bandobust duty near Chilkoor temple where the accident occurred. He clearly narrated the incident in Ex.A1 – F.I.R. that while the petitioner – P.W.1 was in the bus stand, the driver, while taking the bus reverse in a rash and negligent manner, the front wheel of the bus run over left foot of P.W.1 and caused crush injury. Nothing suggested to P.W.1 with regard to involvement in the accident and more so, R.W.1

clearly admits the involvement of the bus bearing No.AEZ 5961 while in use and he was the driver at the time of accident. P.W.1 was not cross-examined by the appellant. Therefore, the evidence of P.W.1, which remained unchallenged and corroborated with Exs.A1 to A4, well established that the accident was due to rash and negligent driving of R.W.1 who drove the bus bearing No.AEZ 5961 while taking the reverse in a rash and negligent manner and caused the accident resulting the front tyre of the bus run over the left foot of P.W.1. The scene of offence observation report – Ex.A3 shows there was blood on the front tyre of the bus and also on the ground. The Investigating Officer filed Ex.A2 – charge-sheet clearly finding that the accident is due to rash and negligent driving of the driver of RTC bus while taking the bus reverse in a rash and negligent manner. The complainant is none other than the duty constable who is responsible person and there is nothing for him to implicate the RTC bus. Therefore, the finding of the Tribunal that the accident was due to rash and negligent driving of the driver of RTC bus bearing No.AEZ 5961 is legal, valid and do not suffer from any legal infirmities warranting interference.

15. With regard to injuries, there is evidence of P.W.1 wherein he clearly deposed that the bus run over his left foot causing fracture and other multiple injuries all over the body and immediately he was shifted to Osmania General Hospital and again he was shifted to Challa Hospital, Ameerpet. P.W.2 is the Doctor who treated P.W.1 in Challa Hospital. His evidence is that P.W.1 admitted in Challa Hospital on 29.4.2005 with crush injury to the left foot with compound dislocation of mid tarsan

joints. The injury was caused on 26.4.2005 due to road traffic accident and he was shifted to Osmania General Hospital, later he was shifted to Challa Hospital on 29.4.2005. In the F.I.R. – Ex.A1 it is clearly stated that immediately after the accident, the petitioner was admitted in Osmania General Hospital, Hyderabad in auto. In Ex.A2 – charge-sheet the Investigating Officer also specifically stated that immediately after the accident, he was shifted to Osmania General Hospital, Hyderabad in auto.

16. Ex.A4 is the MLC report issued by Osmania General Hospital which shows that P.W.1 was admitted in the Hospital on 26.4.2005 and he was examined at 3.35 PM and the description of wound is bandaged wound with heavy bleeding of left foot. He was first referred to DSO, Ortho and x.ray of left foot was taken. Ex.A5 is the receipt for Rs.32,822/-. Ex.A6 is the discharge summary from Challa Hospital, according to which P.W.1 admitted in the hospital on 29.4.2005 and underwent operations on 4.5.2005 and 23.5.2005 and discharged on 13.6.2005 wherein it was mentioned crush injury to the left foot with compound dislocation of mid tarsan joints. First it was written as 'L' and it was corrected to 'R'. Ex.A7 is the medical certificate issued by Susheela hospital wherein it was mentioned crush injury to right foot. P.W.2 is the proper person who treated P.W.1 in Challa Hospital to explain the injury. In the evidence in chief P.W.2 stated that P.W.1 admitted in the Hospital on 29.4.2005 with crush injury to the left foot with compound dislocation of mid tarsan joints and he was operated on 4.5.2005 i.e., debridement and stabilisation and he was again operated

on 23.5.2005 i.e., skin grafting and he was discharged on 13.6.2005. The injuries are grievous in nature. Ex.A7 - medical certificate, Ex.A8 - X.rays 4 in number and Ex.A6 – discharge summary were issued by Challa Hospital and Ex.A5 - bill was also issued by Challa Hospital. It is further clarified that P.W.1 came into Hospital on 29.4.2005 with very serious infection of foot, bones, joints and muscle and still he was got infection of ankle bone which may require the treatment in future and the disability is 30% which is permanent and partial. During cross-examination of P.W.2, he stated that the patient – P.W.1 directly came to the hospital, but he was not referred by the Osmania General Hospital. The only suggestion to P.W.2 is that the disability was not 30%, it may be 10-15%. The petitioner requires further operation which may cost approximately Rs.20,000/- and he has given the medical certificate Ex.A7. As already discussed P.W.2 is the proper person to clarify the injury caused whether to the left foot or right foot. Though respondent cross-examined R.W.2 at length, there is no such suggestion to get it clarified whether P.W.1 sustained crush injury to left foot or right foot, but the evidence of P.W.1 and the earliest report under Ex.A1 – F.I.R., Ex.A2 – charge-sheet, Ex.A4 – MLC report and x.rays to left foot clearly established the crush injury is only to the left foot. Challa Hospital under Exs.A6 and A7 noted as right foot, but where as in the evidence of P.W.2 he deposed that crush injury is to the left foot. Therefore, the discrepancy in Exs.A6 and A7 is while preparing the medical certificate and while noting down in discharge-summary – Ex.A6 which carried in Ex.A7 – medical certificate. It occurred only due to oversight, whereas

in documentary evidence Exs.A1 to A4 it is clearly shown that crush injury was to left foot and X.ray was taken to the left foot. Therefore, inadvertently mentioning in Ex.A6 which was carried in Ex.A7 – medical certificate is immaterial and does not prevail over the earliest report – Ex.A1 and charge-sheet – Ex.A2 and M.L.C. Report – Ex.A4 which were to the effect that immediately after the accident, petitioner was admitted in the Osmania General Hospital, but it is on 29.4.2005, three days after the discharge from the Osmania General Hospital, he himself directly approached Challa Hospital on 29.4.2005, where it was recorded as right foot and the same was carried in Ex.A7 – medical certificate.

17. Exs.A5 – Medical Bills, Ex.A6 – discharge summary, Ex.A7 – Medical certificate and Ex.A8 – x.rays pertain to Challa Hospital are confronted to P.W.2 and they were proved. The evidence of P.Ws.1 and 2 established that the injury was infected and which requires further treatment and operation, which may cost approximately Rs.20,000/-.

18. It is pertinent to note that the petitioner did not produce any proof of age and income of P.W.1. The evidence of P.W.1 is that he was working as a Watchman in Suryateja Industries Private Limited and was earning Rs.2,800/- per month. Though he filed his salary certificate issued by Suryateja Industries Private Limited, it was not brought on record. The claimant claimed Rs.2,00,000/- compensation including the compensation under the heads of ‘permanent disability’ and also ‘loss of earnings’. The evidence of P.W.1 is that due to the accident he became

permanently disabled and also suffered loss of earnings, but failed to make out how much time he was bedridden and what is the loss of income. As per Ex.A4, P.W.1 went to the Hospital on 26.4.2005 and he was examined by the Doctor at 3.35 PM with casual O.P. No.28459. He was referred to DSO, Orthopaedics and x.ray to left foot AP was suggested and in Ex.A4 the description of wound is mentioned as bandaged wound with heavy bleeding of left foot injury. Therefore, P.W.1 was not admitted in the Osmania General Hospital, but according to the evidence of P.W.2 and Ex.A6, P.W.1 alone went to Challa Hospital and admitted on 29.4.2005 and twice he was operated i.e., on 4.5.2005 and 23.5.2005 and discharged on 13.6.2005. Accordingly, he was in challa hospital from 29.4.2005 to 13.6.2005. In the Challa Hospital debridement and stabilisation was done on 4.5.2005 and he was again operated on 23.5.2005 for skin grafting and discharged on 13.6.2005.

19. The Tribunal, having considered the oral evidence of P.W.1 and medical evidence of P.W.2 and Exs.A4 to A8, came to the conclusion that the petitioner failed to prove his income and earnings at the time of accident, but considering the age of the petitioner as 20 years at the time of accident, petitioner was hale and healthy and petitioner was sustained crush injury to the left foot and though he has undergone operation twice on 4.5.2005 and 23.5.2005 in Challa Hospital under P.W.2, still that wound is not recovered and he need further treatment and operation in future which requires Rs.20,000/-, according to the evidence of P.W.2. The tribunal further found that in view of the gravity

of injuries he was shifted to the Hospital from the scene of offence and certainly incurred expenditure towards transportation. Accordingly, the petitioner is entitled for compensation on the head of transportation to the hospital and medicines, extra-nourishment and also loss of earnings when he sustained 35% disability and now he cannot walk as he used to walk earlier. Therefore, find that the petitioner is also entitled for compensation under the head of disability. Accordingly, the Tribunal, having considered the above three facts, awarded Rs.1,00,000/- in lump sum, which is just and reasonable compensation. In view of the crush injury caused to the left foot and treatment in Osmania Hospital and subsequently in Challa Hospital and as he has undergone surgeries twice for debridement and skin grafting and incurred expenditure as explained in the medical bills - Ex.A5, the Tribunal in lump sum awarded Rs.1,00,000/-, which is just compensation.

20. In view of the above facts and circumstances, I am of the considered view that the findings and conclusions arrived at by the tribunal and awarding Rs.1,00,000/- in lump sum for crush injury to left foot, particularly as he suffered surgeries twice incurring heavy expenditure, do not suffer from any legal infirmities warranting interference.

21. In the result, the appeal is dismissed with costs while confirming the award and decree dated 6.11.2007 in O.P.No.745 of 2007 on the file of the Motor Vehicle Accident Claims Tribunal-cum-VI Additional District Judge, (Fast Tract Court) at Vikarabad, Rangareddy

District, awarding a sum of Rs.1,00,000/- with interest at 7.5% per annum from the date of petition till the date of realisation.

22. The respondent is directed to deposit the awarded amount after deducting the amount, if any, already deposited or paid within thirty days from the date of receipt of a copy of this judgment. On such deposit, the petitioner is entitled to withdraw the same.

23. Advocate fee is fixed at Rs.2,500/-.

24. Consequently, miscellaneous petitions pending, if any, shall stand closed.

22nd January, 2018

skmr



JUSTICE N.BALAYOGI