

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.927 OF 2011

JUDGMENT:

Appellant-Andhra Pradesh State Road Transport Corporation filed this appeal against the order and decree dated 19.04.2010 passed in O.P.No.364 of 2007 by the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Medak at Sangareddy, granting compensation of Rs.2,90,289/- as against the claim of Rs.5,00,000/- to the respondent-claimant for the injuries sustained by her in the motor vehicle accident occurred on 30.10.2006.

Brief facts of the case are that the respondent-claimant, being a minor aged about 12 years at the time of accident and represented by her father, filed a claim petition under Section 166 of the Motor Vehicles Act, 1988, alleging that on 30.10.2006, after attending the school, she went to Rajiv Chowk in Narayanakhed to board a bus to go to her village. At about 5.15 p.m. the offending RTC bus bearing No.AP10 Z 6307 was stopped and meanwhile its driver suddenly moved the bus in a rash and negligent manner, due to which, she fell down and the tyres of the bus ran over her, which resulted into fracture of both legs and abdominal injury extending vagina and rectum with fracture of pubic bone. She was shifted to Gandhi Hospital where she was treated as in-patient from 30.10.2006 to 06.02.2007 and underwent several operations and incurred nearly Rs.1,00,000/- towards medical expenses. It was also stated that due to the injuries sustained in the accident, she could not sit and walk. Due to injuries to private parts, she

cannot have normal healthy life in future, she was put to loss of amenities in life and her future life was also affected in all respects. Since she was bedridden, her parents were looking after her and she had to discontinue her studies. She further requires another operation incurring Rs.1,00,000/- and the injuries resulted in permanent disability. Police registered a case in crime No.130 of 2006 against the driver of the offending bus for the offence punishable under Section 338 of Indian Penal Code. Hence, she claimed compensation of Rs.5 lakhs from the appellant.

The appellant-Corporation filed a counter affidavit before the Tribunal denying the material averments of the claim petition and specifically contending that the claimant, being a minor and ignorant of the traffic rules, tried to board the moving bus in a hurried manner and in that process fell down due to slip of her balance and there was no negligence on the part of the driver of the offending bus.

Based on the above pleadings, the Tribunal framed the following issues for its consideration:

- 1) Whether the accident occurred due to the rash and negligent driving of the driver of the crime vehicle?
- 2) Whether the petitioner is entitled for compensation, if so, at what quantum and from whom?
- 3) To what relief?

On behalf of the claimant, her father was got examined as P.W.1 and Dr.J.Ashoka Vardhan, on Commission, was got examined as P.W.2 and Exs.A.1 to A.8 were got marked. On behalf of the appellant, no oral or documentary evidence was marked.

The Tribunal after considering the evidence of P.W.1 and Exs.A.1 and A.2, certified copies of FIR and charge sheet respectively, and also keeping in view the non-examination of the driver of the offending bus by the appellant to disprove his negligence, came to the conclusion that the accident was occurred due to the rash and negligent driving of the driver of the offending bus.

Further, the Tribunal after considering Ex.A.4-Bonafide Certificate opined that the date of birth of the injured was 11.05.1994, she was aged about 12 years and studying Class-VI in Gayatri Vidyalaya High School at the time of accident. The Tribunal after considering Ex.A.6-Disability Certificate issued by the Medical Board of Gandhi Hospital, Secunderabad, opined that the injured sustained 20% disability due to the injuries sustained by her in the accident. Further, the Tribunal after considering the evidence of P.W.2 coupled with Exs.A.5 to A.8, corroborated by the evidence of P.W.1, has granted Rs.75,000/- towards pain and suffering, Rs.15,289/- towards medical bills and transportation and Rs.1 lakh towards shortening of leg, limping, loss of marriage prospects, in all, Rs.2,90,289/- with proportionate costs and interest @ 7.5% per annum. Aggrieved by the same, the present appeal came to be filed.

Learned Standing Counsel for the appellant-Corporation would contend that the injured-claimant being a minor was not assisted by any elderly person in boarding the bus, which amounts to negligence and contributed to the occurrence of the accident. He would further contend that no eye witnesses were examined

either in the criminal case or in the claim petition under Section 166 of the M.V.Act and awarding compensation of Rs.1 lakh towards shortening of leg, limping and loss of marriage prospects is against the principles laid down in Schedule II of the M.V.Act.

Per contra, Sri Palle Sriharinath, learned counsel for the respondent-claimant, would contend that based on the evidence on record, the Tribunal has rightly held that the accident was occurred due to the rash and negligent driving of the driver of the RTC bus and if he would have taken proper care and caution, he would have averted the accident. For the injuries sustained by the claimant, the compensation awarded by the Tribunal cannot be said to be excessive.

In the facts and circumstances of the case, having heard the rival contentions and perused the evidence available on record, it is found that the respondent-claimant sustained grievous injuries in the accident occurred on 30.10.2006 due to the rash and negligent driving of the offending bus by its driver and he moved the bus while the minor girl was boarding the bus. It is no doubt true that the appellant-Corporation denied negligence on the part of the driver of the RTC bus, but, the driver discreetly desisted from entering the witness box and offering himself for cross-examination. He did not offer any explanation to disprove his negligence. Therefore, the Tribunal rightly held that the accident was occurred due to the rash and negligent driving of the driver of the offending bus, based on the evidence of P.W.1 and Exs.A.1 and A.2.

It is clear from the evidence of P.W.2-Doctor that the injured-claimant suffered fracture of right femur, fracture of both bones of left leg and fracture of pelvis. She underwent plastic surgery and skin grafting. The Doctor also found shortening of 2" on right leg, difficulty in squatting on the floor and limping due to the said injury. The Medical Board of Gandhi Hospital issued Ex.A.5-Disability Certificate and P.W.2 certified that the injured minor girl suffered 20% permanent disability.

Admittedly, the injured minor girl suffered fracture of pelvis. The fracture of pelvis would likely to lead permanent disability at the time of delivery and greatly affect her future happiness as a married woman. The injury to the limb prevented free movement of her legs for all times to come. The chances of improvement are bleak. Her marriage prospects are uncertain. Therefore, considering the injuries sustained and treatment undergone by the injured-claimant coupled with the documentary evidence under Exs.A.5 to A.8, this Court is of the view that granting compensation of Rs.1 lakh towards shortening of leg, limping and loss of marriage prospects on account of 20% permanent disability cannot be said to be excessive. Further, based on the material available on record, the Tribunal has granted Rs.15,289/- towards medical bills and transportation charges and Rs.75,000/- towards pain and suffering for the grievous injuries. Hence, this Court finds no illegality or irregularity in awarding total compensation of Rs.2,90,289/- with proportionate costs and interest @ 7.5% per annum by the Tribunal.

Hence, the appeal is dismissed. Entire compensation amount along with proportionate costs and interest shall be deposited to the credit of the O.P. before the Tribunal within a period of two months from the date of receipt of a copy of this order. Amounts already deposited shall be given credit. On such deposit, the respondent-claimant can withdraw the entire compensation amount since she was declared as major vide order passed in MACMA MP No.708 of 2013.

Miscellaneous petitions pending in this appeal, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

30.10.2018
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