

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A. No. 492 OF 2011

JUDGMENT:

The appellant is the injured claimant filed this appeal against the award and decree dated 29.11.2010 passed in M.V.O.P.No.485 of 2007 by the II Additional District & Sessions Judge (Fast Track Court), Srikakulam, whereby granted a sum of 25,000/- with proportionate costs and interest at 9% per annum for the injuries sustained by the appellant in the accident occurred on 29.03.2007.

2. The appellant 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 claiming compensation of Rs.1 lakh for the injuries sustained by the appellant against the respondents, alleging that on 29.03.2007 at 11.00 a.m. while she was going to Koyyam village from Srikakulam by auto bearing No.AP30T 9143 and when the auto reached near Pathakurminaidupeta village at Etcherla Mandal at about 12 noon though it was going slowly and cautiously on the left side road margin, an RTC bus bearing No.AP10Z 7881 driven by its driver in a rash and negligent manner at high speed and dashed against the auto, as a result the auto turned turtle and the petitioner along with other passengers sustained multiple fractures. The petitioner was admitted in the Government hospital,

Srikakulam where she was treated as inpatient for two days and discharged, thereafter she continued treatment with a private doctors at Srikakulam and Vizianagaram by spending Rs.10,000/- towards medicines and traveling. The petitioner is a labourer and is earning Rs.3,000/- per month.

3. The 2nd respondent filed counter, which was adopted by 1st respondent, denying the averments of the claim petition and specifically denying the allegation of rash and negligence on the part of the driver of the 2nd respondent and that the petition is not maintainable for non-joinder of necessary parties.

4. Based on the pleadings, the Tribunal framed the following issues:

- 1) Whether the accident occurred due to rash and negligent driving of the driver of the R1 driver of A.P.S.R.T.C. Bus bearing no.AP10/Z-7881 resulting in injuries to the petitioner?
- 2) Whether the petitioners are entitled to claim any compensation? If so, to what amount and from whom?
- 3) To what relief?

5. During the course of trial, the appellant/petitioner was examined as PW1, the doctor who treated the injured was examined as PW2 and Exs.A.1 to A.4 and Ex.X.1 were marked on behalf of the petitioner. No oral or documentary evidence was adduced on behalf of the respondents.

6. The Tribunal, considering the evidence of PW1 coupled with documentary evidence Exs.A.1 to A.4, came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the offending bus belonging to the 2nd respondent/APSRTC and accordingly answered the issue No.1 in favour of the claimant/appellant. In the absence of contrary evidence, the said finding of the Tribunal cannot be found fault with.

7. Based on the evidence of PW2, PW1 sustained fracture to the left humerus and she was admitted in the hospital on 29.03.2007 and discharged on 31.03.2007. She was treated conservatively with U-slab but the bone of left forearm is not yet united and she cannot do any manual work with left hand and PW2 opined that her disability is 40% and is permanent. The Tribunal found that there is no supporting legal evidence and in the absence of X-ray, the same could not be accepted.

8. However, the Tribunal taking into consideration of the injury sustained by the appellant/claimant, a fracture to the left upper arm of the petitioner, observed that she must have been prevented from doing work regularly for a period of six months and during that period she must have lost income, granted Rs.15,000/- towards loss of earnings and further granted an amount of Rs.1,000/- towards purchase of medicines and Rs.9,000/- towards pain and suffering. In aggregate, Rs.25,000/- was granted to the appellant/claimant

along with proportionate costs and interest @ 9% per annum holding that the respondents 1 and 2 were jointly and severally liable to pay the amount duly fixing three months time for the payment of compensation and if the compensation is not paid within three months, the compensation carries interest @ 12% per annum till the date of payment.

9. The appellant/claimant filed this appeal seeking enhancement of compensation stating that the Tribunal has grossly erred in not considering the evidence of PW2 and erred in not granting the compensation by taking into consideration of the 40% disability as the appellant/claimant is doing coolie work and she could not attend the coolie work due to the injuries sustained by her in the accident.

10. The learned counsel for the respondents states that there is no illegality in granting compensation by the Tribunal. The Tribunal has granted just and fair compensation.

11. The Tribunal, however, found that the said pleadings are not supported by legal and documentary evidence and mere oral evidence of PW2, the doctor, is not sufficient to take into consideration of the 40% disability to grant compensation.

12. In the facts and circumstances of the case, this Court finds that there is no illegality or irregularity in granting the compensation of Rs.25,000/- with proportionate costs and interest and there are no grounds to enhance the compensation amount over and above the compensation granted by the Tribunal.

13. The appeal is accordingly dismissed. No order as to costs.

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

26-10-2018
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