

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A. No. 564 OF 2011

JUDGMENT:

The appellants are the APSRTC/respondents filed this appeal against the award and decree passed in M.O.P.No.943 of 2006 dated 06.04.2009 by the VIII Additional District & Sessions Judge (Fast Track Court), Visakhapatnam granting a sum of Rs.87,500/- against the claim of Rs.1,50,000/- for the injuries sustained by the 1st respondent-Undabatla Srinivas @ Srinivasulu in the motor accident occurred on 16.01.2006.

2. The 1st respondent/claimant filed the claim petition under Section 166 of the Motor Vehicles Act read with Rule 455 of the A.P.M.V. Rules claiming compensation of Rs.1,50,000/- together with interest @ 18% per annum against the appellants and its driver, alleging that on 16.01.2006 at about 4.00 p.m. when he reached near Adarshnagar cross road and crossing the road on NH-5 by giving signal at about 4.00 p.m., the offending vehicle bearing No.AP10Z 9676 belongs to the appellant and driven by its driver in a rash and negligent manner with high speed and dashed the respondent, as a result the respondent/claimant sustained grievous crush injury to his right hand and he was shifted to K.G.Hospital, Visakhapatnam. He sustained fracture of little finger of right hand and crush injury on his

right hand and became permanently disabled. Due to the crush injury to his right hand, he is unfit to drive any vehicle and he was treated as inpatient from 16.01.2006 to 31.01.2006 in the K.G.Hospital, Visakhapatnam. Later, he was joined in the Bharadwaj hospital and was treated as inpatient for one month. He underwent an operation there and he spent Rs.30,000/- towards treatment and also spent Rs.5,000/- towards transportation. The III Town Traffic police registered a case in Crime No.8 of 2006 under Section 338 I.P.C. The respondent/claimant was aged about 40 years and he is working as a truck driver and earning Rs.5,000/- per month along with Rs.500/- batta for every day.

3. The 2nd appellant filed counter denying the averments of the petition specifically and denied the allegation that the driver of the offending vehicle has driven the vehicle in rash and negligent manner and insisted to prove the age of the claimant, occupation and earnings. The claim of Rs.1,50,000/- is on high side and he is entitled to claim the compensation of Rs.25,000/- under no fault liability.

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

- 1) Whether the petitioner has sustained injuries in the motor accident occurred due to the rash and negligent driving of the vehicle-bearing no.AP10Z 9676 (APSRTC Bus) driven by (R-1) its driver?

2) Whether the petitioner is entitled to compensation? If so, to what amount and from which of the respondents?

3) To what relief?

5. During the course of trial, on behalf of the petitioner, PWs 1 to 3 were examined and Exs.A.1 to A.13 were marked. On behalf of the respondents, RW1 – driver of APSRTC bus was examined.

6. The Tribunal, based on the evidence of PW1 coupled with documentary evidence Exs.A.1 to A.13, held that on 16.01.2006 the accident was occurred due to the rash and negligent driving of the driver of the offending vehicle and the respondent/claimant received injuries in the accident and he received treatment in the hospital. Accordingly, the issue No.1 was answered in favour of the respondent/claimant and the same cannot be found fault with in the absence of contrary evidence.

7. Further, the Tribunal based on the evidence of PW3, the owner of the lorry in which the petitioner was working as driver and he used to pay Rs.3,000/- per month and Rs.500/-, which supports the testimony of PW1, granted Rs.10,500/- towards loss of earnings @ Rs.3,000/- per month as the respondent/claimant took treatment from 16.01.2006 to 31.01.2006 in the K.G.Hospital, Visakhapatnam and from thereafter from 31.01.2006 to 12.04.2006 he was treated as inpatient in Bharadwaj hospital, Visakhapatnam and he

underwent treatment and four operations were conducted. The Tribunal rejected the claim of the respondent for Rs.30,000/- towards medicines and treatment and Rs.4,000/- towards transportation, due to lack of evidence, but Rs.2,000/- granted towards transportation and Rs.5,000/- was granted towards medicines and extra-nourishment. The Tribunal also granted Rs.17,500/- towards special damages and Rs.10,000/- towards pain and suffering.

8. The Tribunal had come to the conclusion that the respondent is entitled for Rs.30,000/- towards continuing and permanent disability considering the evidence of PW3 coupled with the disability certificate as the petitioner sustained 40% disability, the age of the injured is 40 years and he is working as a lorry driver and the disability causes impediment to carry on the profession of the respondent as a driver and he was granted Rs.30,000/- towards loss of future earning power. In total, the respondent/claimant was granted Rs.70,000/- towards general damages and he was awarded a total compensation of Rs.87,500/- with proportionate costs and interest @ 7.5% fixing the time limit to deposit the compensation amount.

9. Being aggrieved by the award, the appellants/respondents filed this appeal mainly contending that the accident occurred due to contributory negligence of the respondent/claimant and invoked the principle of *res ipsa*

loquitur. The claim petition is not maintainable for non-joinder of insurance company and owner of the motor cycle involved in the accident. It is further contended that the Tribunal erred in concluding that the injured sustained 40% of the permanent partial disability and awarding Rs.10,500/- towards loss of earnings and another sum of Rs.30,000/- towards loss of future earnings and the award is liable to be set aside to that extent.

10. In spite of the receipt of the notice, the 1st respondent/injured claimant failed to appear before this Court.

11. However, considering the facts and circumstances of this case, this Court found that there is no illegality or irregularity in passing the award and decree by the Tribunal. The Tribunal has considered and discussed the evidence at great length in the award and rightly came to the conclusion that the accident occurred due to rash and negligent driving of the driver of the offending vehicle and based on the evidence available on record came to the conclusion that the respondent/claimant was working as a lorry driver and earning Rs.3,500/- per month, granted Rs.10,500/- towards loss of earnings, Rs.5,000/- towards medicines and extra-nourishment, Rs.10,000/- towards pain and suffering, Rs.30,000/- towards loss of future earnings and Rs.17,500/- towards special damages. In total, compensation of Rs.87,500/- was granted with proportionate costs and

interest @ 7.5% holding that the appellants and its driver jointly and severally liable to pay the compensation to the respondent/claimant within a period of 30 days.

12. This Court, on careful perusal of the evidence on record, found that there is no illegality or irregularity in passing the award by the Tribunal warranting interference of this Court.

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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