

HON'BLE MS JUSTICE J.UMA DEVI**M.A.C.M.A.No.1953 OF 2011****ORDER:**

The Depot Manager and the Managing Director of APSRTC, who are the respondents in M.V.O.P.No.481 of 2007 have filed the instant appeal questioning the judgment and decree dated 13.06.2011 passed in M.V.O.P.No.481 of 2007 by the Special Judge for Trial of Offences under SC/ST (POA) Act-cum-V Additional District and Sessions Judge, Medak at Sangareddy, whereby the compensation of Rs.7,23,500/- is awarded to the claimant-N.Kiran Kumar in respect of injuries received by him in the accident that occurred on 11.04.2007 at about 11.30 p.m at Sai Ram Tiffin Centre at Kanukunta.

According to appellants, the award in M.V.O.P.No.481 of 2007 is against to law and the evidence on record. It is their contention the court below ought not to have entertained the claim petition filed by the respondent herein under Sections 166, 163-A and 140 of the M.V.Act (for short 'the Act'). The appellants further state that there was contributory negligence on the part of the rider of motor cycle. The Court below without appreciation of the aforementioned fact that the rider of the motor cycle is equally responsible for the occurrence of the accident granted compensation of Rs.7,23,500/- to the claimant and made the appellants liable to pay such amount together with interest and costs thereon. It has been further contended by the appellants that consolidated bill-Ex.A-6 and bunch of medical bills-Ex-7 are not established by the claimant by examining the person concerned with them. Though the claimant has not established that he incurred Rs.6,00,000/- towards medicines and hospitalisation charges, the Court below awarded Rs.6,00,000/- under the head of medical expenditure.

Therefore, the award passed by the court below is challenged seeking the indulgence of this Court.

The respondent in the appeal had laid the claim against the appellants for compensation of Rs.12,00,000/- by making an application under Sections 166, 163-A and 140 of the Act.

The main thrust in the appellants' case is as to the entertaining of the application of the respondent herein under Sections 166, 163-A and 140 of the Act.

The framing of issue No.1 by the court below itself is sufficient to say that though claim petition is filed namely under Sections 166, 163-A and 140 of the Act, it is entertained and dealt under Section 166 of the Act.

The claimant has pleaded in the claim statement that on 11.04.2007 at about 11.30 p.m. while he was proceeding on his motor cycle bearing No.AP-10RC-TR-4482 from Chandanagar to Patancheru along with a pillion rider, when he reached near Sai Ram Tiffin Centre at Kanukunta, an RTC bus bearing No.AP-10-Z-7715 came in his opposite direction with high speed in a rash and negligent manner and dashed his motor cycle and as the result of it, himself and the pillion rider fell down from the motor cycle and received grievous injuries. Immediately, he was shifted to Remedy Hospital, Kukatpally, where he was given first aid and from there, he was shifted to Remedy Super Speciality Hospital, Himayathnagar, and there he took treatment as an inpatient for 28 days and underwent surgeries and implants were inserted. He incurred heavy expenditure towards medicines and hospitalisation charges. Though he took treatment for such a long period of 28 days, there was no improvement in his condition. He also asserted that he was hale and healthy prior to the accident and was about 21 years by the date of accident and was

getting income of Rs.4,500/- per month by working as a Supervisor in Anand Hotel, Patancheru.

Though the claim for compensation of Rs.12,00,000/- was laid by him, the court below upon appreciation of entire material on record, awarded Rs.7,23,500/- and fastened the liability of payment of such compensation amount on the appellants.

The appellants having felt that the award so passed by the court below is onerous and against to law and weight of evidence have preferred the present appeal.

The claimant examined himself as PW.1 and marked Exs.A-1 to A-3 to prove negligence on the part of driver of RTC bus bearing No.AP-10Z-7715, which hit his motor cycle while he was proceeding towards Patancheru from Chandanagar as its rider.

Though the appellants contended that there is contributory negligence on the part of the claimant, they have not adduced any evidence in proof of negligence they attributed to the claimant. Since the evidence of PW.1 and Exs.A1 toA3 are the only material placed on record to answer the contention of the appellants whether there was contributory negligence on the part of the claimant, whether he is equally responsible for occurrence of the accident, they are required to be looked into to examine was there any contributory negligence on the part of the petitioner as has been contended by the appellants.

It is deposed by PW.1 that on 11.04.2007 at about 11.30 p.m. while he was proceeding on his motor cycle bearing No.AP-10RC-TR/4482 along with pillion rider from Chandanagar to Patancheru, when he reached near Sari Ram Tiffin Centre at Kanukunta, an RTC bus bearing No.AP-10Z-7715 came in his opposite direction in a rash and negligent manner and

dashed against the motor cycle and as the result of it, he fell from the motor cycle and received injuries. More or less, same version was mentioned in Ex.A1. Neither the driver of the bus nor its conductor was examined by the appellants, who came with a contention that there was contributory negligence on the part of the petitioner. Not even a passenger of the bus was examined by it, to prove its version. No attempt was made by it to disprove the testimony of PW.1, who in clear terms deposed that due to negligent driving of the RTC bus bearing No.AP-10Z-7715 he met with the accident. Placing reliance on the evidence of PW.1 whose evidence was not disproved, the court below rightly held that due to the negligent driving of the RTC bus bearing No.AP-10-Z-7715 by its driver the claimant received injuries.

Coming to the other contentions raised by the appellants as to the quantification of compensation is concerned, it is evident from Ex.A-3-Wound Certificate vis-à-vis the evidence of PW.1 that he received (i) compound depressed fracture to frontal bone with bone loss, (ii) fracture of internal wall of orbit, (iii) fracture frontal bone sinus, (iv) fracture of nasal bone, (v) fracture of maxilla with frontal lobe contusion with pneumocephaly, (vi) both bone left fore arm with pin palsy, (vii) degloving injury of left thigh with open laceration and (viii) blood injuries all over the body. As per the testimony of PW.1, soon after the accident he was taken to Remedy Super Speciality Hospital, Himayathnagar, Hyderabad, and there he was treated as inpatient from 12.04.2007 to 05.05.2007. While taking treatment as inpatient in Remedy Super Speciality Hospital, he underwent two surgeries, one on 12.04.2007 and another on 25.04.2007 and he was discharged from the said Hospital on 05.05.2007.

The claimant had examined Dr.Sridhar Kasturi as PW.2 and produced Ex.A-4-Discharge Summary card issued by Remedy Super

Speciality Hospital, Himayathnagar, to prove the treatment particulars and the disabilities he had due to the injuries received by him in the above mentioned accident. He produced medical prescriptions-Ex.A-5, consolidated bill-Ex.A-6 and bunch of medical bills-Ex.A-7 to prove the medical expenditure he incurred. The court below took note of the nature of injuries received by the claimant in the accident and the evidence available in this regard and awarded Rs.1,05,000/- towards pain and suffering.

The claimant, having pleaded that he incurred heavy expenditure towards medicines, hospitalisation charges, examined PW.2. PW.2 deposed about the nature of injuries received by the claimant and the particulars of treatment provided to him while he was in hospital. The discharge summary-Ex.A-4 was also placed on record by him to prove the nature of treatment taken by him in Remedy Super Speciality Hospital, Himayathnagar, for a period of twenty days and during the said period surgeries conducted on him. The evidence of PW.2 also would indicate that the claimant has to undergo cosmetic surgery in future for which he may have to incur Rs.80,000/- to Rs.90,000/-. The court below, taking note of the evidence given by PW.2 regarding the treatment taken by the claimant and the nature of surgeries which he has to undergo in future, has rightly awarded compensation of Rs.6,00,000/- towards medicines and hospitalisation charges and future medical expenditure. The amount so awarded appears to be just and reasonable.

As the evidence given by the claimant insofar as his working as a Supervisor in a hotel at Patancheruvu, prior to the accident, has not been negated/disproved, the court below has awarded Rs.15,000/- under the head of loss of income during the period of treatment.

This Court also finds justification in granting compensation of Rs.2,000/- and Rs.1,500/- to the claimant under the head of extra nourishment and transportation charges.

After going through the entire evidence on record, this Court finds that the court below has not committed any error in granting compensation of Rs.7,23,500/- to the claimant in respect of the injuries received by him.

The award under challenge, in my view, is not suffering from legal or factual infirmities. Therefore, the same has not been interfered with.

In the light of my above afore held discussion, the appeal filed by APSRTC fails and the same is hereby dismissed accordingly. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

JUSTICE J.UMA DEVI

Date:14.12.2018
Prv

