

THE HON'BLE MS. JUSTICE J. UMA DEVI

M.A.C.M.A.No.1211 of 2008

JUDGMENT:

1. Having been aggrieved by the order dated 30.03.2007 passed in O.P.No.925 of 2005 on the file of the Motor Accidents Claims Tribunal-cum-I Additional District and Sessions Judge, Visakhapatnam, awarding compensation of Rs.72,000/- to the 1st respondent herein i.e., the claimant in the aforementioned O.P in respect of the injuries received by him in the accident dated 21.07.2004 and making the appellants herein (respondents 2 and 3 in the aforementioned O.P.) to pay such awarded amount to the claimant, the present appeal is filed by them.

2. The learned Standing Counsel for the appellants submits that the accident occurred due to the fault of the claimant. It is contended that while R.W.1, the driver of the APSRTC bus, was taking the bus towards left side slowly, the claimant who was standing on the left side on the footpath came on road suddenly, as a result of which the bus hit him accidentally, and therefore there was no negligence on the part of R.W.1 in causing the accident and that the evidence given by R.W.1 in this regard was totally discarded by the Court below. It was his further contention that though the claimant failed to substantiate his contention that he was getting income of Rs.7,000/- per month as a Head Constable by way of producing a salary certificate, the Court below wrongly assessed the

loss of income at Rs.42,000/- for a period of six months, for which no document was produced.

3. The learned Counsel for the 1st respondent-claimant while opposing the aforementioned contentions of the learned Standing Counsel for the appellants, submitted that a well-reasoned order was passed by the Court below on appreciation of oral evidence of the claimant who stated that due to rash and negligent driving of R.W.1, he received injuries to his left ankle, fracture of 2nd, 3rd and 4th meta tarsal bones of left foot associated with dislocation and fracture of left talonavicular joint of left ankle. The order passed by the Court below is not suffering from serious infirmities and the same deserves to be upheld.

4. Having heard the learned Counsel appearing on either side, now the points that arise for consideration are as under:

(1) Whether the Court below erred in finding that the accident occurred due to rash and negligent driving of driver of the APSRTC bus bearing registration No.AP 10Z 1574 ?

(2) Whether the compensation awarded by the Court below is excessive and exorbitant?

5. I have perused the order impugned in this appeal and also the evidence available in the case record.

6. The undisputed fact is that the claimant was working as a Head Constable by the date of accident. The police of II Town Police Station, Visakhapatnam registered a case in Crime No.42 of

2004 against R.W.1 on the complaint given by the claimant (P.W.1) for causing the accident. P.W.1 in his evidence deposed that on 21.07.2004 at about 12.15 P.M. while he was performing his duty of controlling the traffic at Jagadamba center, Visakhapatnam, an R.T.C. bus bearing registration No.AP 10Z 1574 came from R.T.C. complex in a rash and negligent manner, and while taking a turn towards Collector's office, it came into contact with him and as a result of it, he received lacerated wounds on left ankle and foot and fracture of 2nd, 3rd and 4th meta tarsal bones of left foot associated with dislocation and fracture of left talar navicular of left ankle. In his evidence P.W.1 stated that he went to the place of accident in order to check the vehicles parked at 'No Parking' place. He also stated in his cross-examination that after hitting him, the bus dragged him to some distance. R.W.1 in his evidence stated that the claimant who was standing on the left side on the foot path suddenly came, due to which the bus accidentally hit him. Except the self-serving testimony of R.W.1, no other supporting evidence was adduced by him to show that there was no negligence on his part in causing the accident. The fact that the claimant was dragged to some distance after he was hit by the bus itself would show the negligence of R.W.1 in driving the bus. Apart from the evidence of P.W.1, documentary evidence was also produced by the claimant for establishing the registration of the case against R.W.1 who caused the accident. It appears that the police upon conducting of

investigation thoroughly filed charge sheet against R.W1. Relying on the oral testimony of the claimant so also the documents produced by him i.e., Exs.A1-FIR and A6-charge sheet, which supported his oral evidence on all aspects, the Court below rightly held that the accident occurred due to rash and negligent driving of the driver of RTC bus bearing No.AP 10Z 1574.

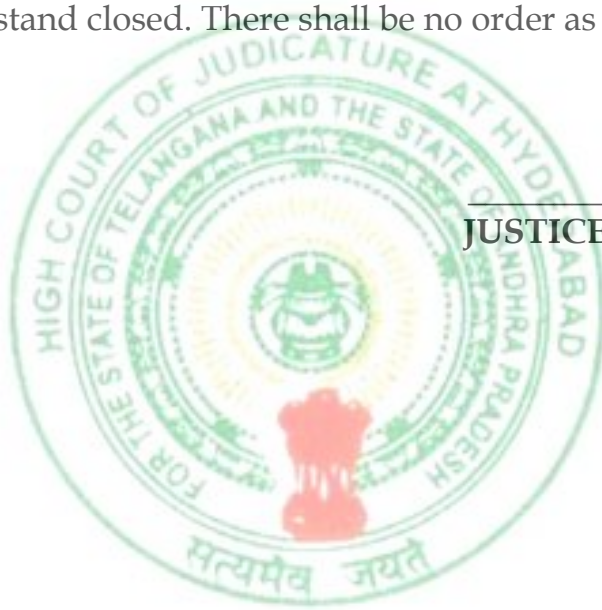
7. The claimant in order to establish the nature of injuries received by him examined P.W.2 and also produced the certified copies of wound certificate (Ex.A2), X-rays (Ex.A3) and disability certificate (Ex.A4). P.W.2 in his evidence deposed that on examination of the claimant (P.W.1), he noticed healed scrap flatting of foot with wasting of muscles and the mobility of ankle joint in small joint to the foot. He further deposed that based on the X-ray report, he assessed the disability of P.W.1 at 30%. Since the claimant did not make any assertion as to the disability attained by him because of the injuries, the Court below, considering the nature of the injuries received by him, awarded compensation of Rs.25,000/- under the head of pain and suffering; Rs.5,000/- under the head of transportation and extra nourishment charges. Considering the monthly income of the claimant at Rs.7,000/-, the Court below awarded compensation of Rs.42,000/- under the head of loss of past earnings. Thus, the Court below awarded total compensation of Rs.72,000/- as against the claim of Rs.1,50,000/-. The amount of

compensation of Rs.72,000/- awarded by the Court below is just and the same in my view needs no intervention.

8. In the light of the aforementioned discussion, the appeal is dismissed and the order of the Tribunal passed in O.P.No.925 of 2005 on the file of the Motor Accidents Claims Tribunal-cum-I Additional District and Sessions Judge, Visakhapatnam is hereby confirmed.

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

27.02.2018
Gsn



JUSTICE J. UMA DEVI