

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.539 OF 2011

JUDGMENT:

Appellant-injured filed this appeal against the award and decree dated 31.03.2005 passed in O.P.No.1180 of 2005 by the Chairman, Motor Accident Claims Tribunal (V Additional District Judge) (FTC), Nizamabad, granting compensation of Rs.40,065/- as against the claim of Rs.2,00,000/- for the injuries sustained by him in the accident occurred on 09.09.2005.

The appellant-injured filed claim petition before the Tribunal under Section 166 (1) (a) of the Motor Vehicles Act, 1988 read with Rule 455 of A.P. Motor Vehicles Rules, 1989, against the respondents alleging that on 09.09.2005 while he was driving the motor cycle bearing No.AP-9-P-3852 from Yellareddy to Nagireddypet village, at about 6.00 p.m. when he reached Atmakoor Gate, one RTC bus bearing No.AP-10-Z-1379 driven by its driver in a rash and negligent, came in his opposite direction and dashed against his motor cycle, as a result of which, he fell down and front wheel of the bus ran over him, due to which, he received head injury, skull fracture, fracture to left leg at two places, fractures at left fibula and left knee. Immediately after the accident, he was shifted to Government Hospital, Nizamabad, and thereafter he was referred to Govt. District Head Quarters Hospital, Nizamabad. He incurred Rs.1,00,000/- towards medical expenses. Due to rash and negligent driving of the driver of the RTC bus, the accident was occurred resulting in injuries to him.

The respondents filed counter affidavit denying the averments of the claim petition, involvement of RTC bus and motor

cycle in the accident and it was alleged that the accident was occurred due to negligent driving of the driver of the motor cycle i.e. injured herein and that the claim was excessive.

Based on the pleadings of both the parties, the Tribunal framed the following issues:

- 1) Whether the accident was due to rash and negligent driving of APSRTC Bus bearing No.AP-10-Z-1379 by its driver?
- 2) Whether the petitioner is entitled for compensation? If so, to what amount and against which of the respondents?
- 3) To what relief?

In support of his claim, the injured-claimant got examined PWs 1 and 2 and got marked Exs.A.1 to A.14. On behalf of the respondents R.W.1 was got examined. But, no documents were marked.

Based on the evidence of P.W.1 and Exs.A.1 and A.2, the Tribunal came to the conclusion that the accident was occurred due to rash and negligent driving on the part of the driver of the RTC bus bearing No.AP-10-Z-1379. Further, the Tribunal having not accepted the evidence of R.W.1, the driver of the RTC bus, came to the conclusion that R.W.1 drove the bus in a rash and negligent manner and caused accident. Thus, the Tribunal answered issue No.1 in favour of the claimant. Before the Tribunal, P.W.2-Doctor, who treated P.W.1 in the hospital, deposed that he did surgery operation to P.W.1 on 12.09.2005 and fixed interlocking nail to the tibia and discharged him on 12.09.2005. As per the evidence of P.W.2, Ex.A.4-discharge summary, Ex.A.5-follow up treatment prescriptions, Ex.A.6-final bill, Ex.A.7-X-ray

films. According to him, he found Comminuted fracture of both bones of left leg, which is grievous in nature. The Tribunal having considered the evidence of P.Ws.1 and 2 and Exs.A.4 to A.7, felt that it is just, fair and reasonable to award Rs.20,000/- for the fracture suffered by the injured. Further, a sum of Rs.2,000/- was awarded towards pain and suffering and extra nourishment. Further, the Tribunal awarded Rs.15,000/- towards treatment charges for the surgery undergone by the injured, Rs.2,065/- towards medical charges as per Ex.A.8 and Rs.1,000/- towards transport charges. Thus, in total, the Tribunal granted Rs.40,065/- payable by both the respondents jointly and severally together with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of realization. Aggrieved by the quantum of compensation, the present appeal came to be filed seeking enhancement of compensation.

Learned counsel for the appellant would contend that the Tribunal grossly erred in awarding Rs.15,000/- towards surgery charges when the claim is for Rs.25,000/- as evident from Ex.A.7. He would further contend that the Tribunal granted an amount of Rs.20,000/- for the grievous injury sustained by him and the same is very meagre when compared to the nature of injury sustained by the injured. The Tribunal granted a paltry sum of Rs.2,000/- towards pain and suffering and extra nourishment and the same also needs to be enhanced.

Per contra, Sri N.Vasudeva Reddy, learned counsel appearing for the respondents, would contend that as per the wound certificate-Ex.A.4, the appellant only received simple injuries. However, as per the evidence of P.W.2-Doctor, who

conducted operation and fixed interlocking nail to the tibia to the injured, the Tribunal rightly granted Rs.15,000/- against the claim of Rs.25,000/-. The Tribunal granted the total compensation of Rs.40,065/- under various heads, which cannot be found fault with. Hence, the appeal filed seeking enhancement of the compensation is liable to be dismissed.

Having heard the rival contentions of the learned counsel and perused the evidence led before the Tribunal, it is found that as per the evidence of PWs 1 and 2 and Exs.A.3 to A.14, the Tribunal has granted the total compensation of Rs.40,065/-, which is fair and just compensation. The Tribunal, while rejecting the claim of the injured for Rs.25,000/- towards surgery charges, has granted only Rs.15,000/- on the ground that though Ex.A.7-Patient Bill substantiates the claim of the injured for Rs.25,000/- but the injured failed to examine any witness in support of Ex.A.7 and even P.W.2 had also not stated about the comprehensive particulars of each charge. In those circumstances, the Tribunal has granted only Rs.15,000/- as against the claim of Rs.25,000/- towards surgery charges. Further, the Tribunal also rejected the medical bills under Ex.A.9 on the ground that they were not supported by any prescriptions. Hence, this Court is of the view that the Tribunal has awarded just and reasonable compensation and I see no ground to enhance the compensation awarded by the Tribunal.

For the reasons stated above, the appeal is dismissed confirming the award and decree dated 31.03.2005 passed in O.P.No.1180 of 2005 by the Chairman, Motor Accident Claims Tribunal (V Additional District Judge) (FTC), Nizamabad.

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

(M.GANGA RAO, J)

14.09.2018
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