

**THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE SMT JUSTICE T. RAJANI**

**M.A.C.M.A. No.1471 OF 2015
AND
I.A.No.7 of 2015
(CROSS OBJECTIONS (SR) No.28589 of 2015)**

COMMON JUDGMENT: (Per Hon'ble Sri Justice Suresh Kumar Kait)

The Andhra Pradesh State Road Transport Corporation (APSRTC) filed the appeal questioning the quantum of compensation awarded by the Motor Accidents Claims Tribunal-cum-I Additional Chief Judge, City Civil Court, Secunderabad, *vide* order, dated 08.12.2014, in O.P.No.352 of 2013, whereby the learned Tribunal awarded compensation to the tune of Rs.35,00,000/- with interest @ 7.5% per annum from the date of filing of the petition i.e., 22.02.2013 till the date of realisation, whereas, the claimant filed the Cross Objections seeking enhancement of compensation.

Learned counsel appearing on behalf of the appellant argued that the learned Tribunal erred in considering P.W.1's evidence as an eye witness even though he is an injured and claimant, as such, he is interested witness and his evidence cannot be relied upon to establish the negligence on the part of the driver of the APSRTC Bus. However, no independent eyewitness was examined to establish the negligence of the driver of the offending vehicle. Learned counsel for the appellant further argued that the learned Tribunal has also erred in taking the income of the injured as Rs.24,499/- per

month even though P.W.4 did not produce the attendance register of the injured and the record with regard to the salary particulars to prove the income of the deceased. It is further submitted that the learned Tribunal has assessed the disability of the injured respondent as 80% without examining any member of the Board, which issued the disability certificate-Ex.A.17.

The injured-respondent herein examined himself as P.W.1 and in the affidavit filed in lieu of examination-in-chief, he categorically stated that on 11.01.2013 at 10.00 A.M., he was proceeding on his motor cycle bearing No.AP 28 BL 0506 on the extreme left side of the road with great care and diligence and when he reached near Kendriya Vidyalaya, Boinpally, Secunderabad, the driver of the APSRTC bus bearing No.AP 11Z 1940 drove it in a rash and negligent manner with high speed and dashed his motor cycle from back side, due to which, he sustained (1) crush injury to right foot dorso lateral aspect, (2) crush injury to left knee, (3) and other injuries all over the body. In addition to the above, the contents of Exs.A.1 to A.4, the certified copies of FIR, charge sheet, case diary and MLC report, corroborate the version of P.W.1 regarding the manner in which the accident occurred. In the cross-examination of P.W.1, when it was suggested that there was no negligence on the part of the APSRTC bus driver and that the accident occurred due to the negligence of P.W.1 himself, such suggestions were denied by P.W.1.

On the other hand, R.W.1, Y.N.Rao, the driver of the APSRTC bus involved in the accident, in his evidence in chief examination stated that on 11.01.2013 at about 10.00 A.M. by the time the above said bus reached Bharat Petroleum Pump, two persons were found riding on a motor cycle ahead of the bus; that all of a sudden, a stray dog came across the road and the above said motor cycle and, due to which, the motor cycle skid, both the riders fell down and sustained injuries; that the APSRTC bus did not even dash the motor cycle or the said injured and that a police case was registered against him and it was ended in acquittal, and therefore, the APSRTC is not liable to pay compensation to the respondent/claimant. In cross-examination of R.W.1, it was elicited that in the judgment of the criminal case covered by Ex.A.1-FIR and Ex.A.2-charge sheet, there is no mention that the accident occurred as stray dog came forward across the road and that the bus did not hit the injured. It was also elicited from the cross examination of R.W.1 that there was no corroboration to the version of R.W.1 that because of the stray dog coming across the road, the motor cycle skid and due to the same, the motor cyclists fell down and P.W.1 sustained injuries.

In the absence of truth in the above said version of R.W.1, we find no substance in the argument of the learned counsel for the appellant that the driver of the APSRTC bus was not negligent.

Regarding the factors to decide the quantum of compensation basing upon the injuries received by P.W.1 and the partial permanent disability suffered by him, the contents of Exs.A.5 to A.9, discharge summary, hospital bill, medical bills, investigation report and photographs are on record. Similarly, regarding the pre-accidental earnings of the deceased, which is the basis to decide the loss of earnings subsequent to the injuries, the same is evident from the evidence of P.W.1 and the contents of Exs.A.10 to A.22, marks list, education certificates, appointment letter, promotion letter, salary certificate, disability certificate, driving licence, x-ray films, ID card and employer ID card of the claimant.

Further, P.W.2, Dr.B.Vipin, the Orthopedic Surgeon at B.B.R Hospital, stated that on 11.01.2013, P.W.1 was brought to his hospital with the injuries due to RTC bus ran over him and after completion of clinical and radiological examinations, he found the following injuries:

- “1. Bad crush injury with skin loss with deep abrasion over right foot with abrasion over right foot with tendons and muscle partially cut, crushed and exposed.
2. Left Knee physiological Degolving, echimosis with no lower limb pulsation with acute thrombosis of left lower limb.
3. Left foot drop, cold left lower limb extimety.
4. Abbrasions of both Elbow joints.
5. Multiple deep and superficial abrasions upto Ankle and Leg.”

He further stated that P.W.1 underwent multiple surgeries for the treatment of above injuries on 11.01.2013, 12.01.2013, 14.01.2013, 16.01.2013, 23.01.2013 and on 28.01.2013,

ultimately, left knee amputation stump revision above right knee leg debridement and SSG was done with dressing and that on 06.02.2013, he was discharged in stable condition with an advise for review. He identified Ex.A.4-medical certificate, Ex.A.5-discharge summary, Ex.A.6 and A.7-medical bills, Ex.A.8-investigation report and Ex.A.20-Xray volumes and stated that P.W.1 paid Rs.2,95,000/- and that three months complete bed rest was advised from the date of discharge from the hospital besides physiotherapy and regular follow ups. He further deposed that as per the schedule, the disability sustained by P.W.1 is to the extent of 80% and the same is assessed by the Medical Board by issuing Ex.A.17.

Thus, on this ground also, we find no substance in the argument of the learned counsel for the appellant that no member of the medical board was examined to establish that the respondent-injured received 80% of the disability.

Regarding the salary of the respondent, as assessed by the Tribunal, P.W.4, the employer of the respondent, had certified the income of the injured *vide* Ex.A.16. Accordingly, the Tribunal assessed the monthly income of the injured as Rs.24,499/- per month.

In view of the above, we find no illegality or perversity in the impugned award. We, accordingly, confirm the same. The appeal is, accordingly, dismissed.

In view of dismissal of the appeal, we find no substance to allow the cross objections filed by the respondent-claimant and the same are accordingly rejected.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

JUSTICE SURESH KUMAR KAIT

Date: 18.04.2018

JUSTICE T. RAJANI

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