

HONOURABLE SRI JUSTICE T.AMARNATH GOUD

C.M.A.No.1579 of 2004
AND
M.A.C.M.A.No.1378 of 2011

COMMON JUDGMENT:

Since both the appeals arise out of the same award, the appeals are taken up together and disposed of together by this common judgment.

2. CMA.No.1579 of 2004 is filed by the APSRTC under Section 173 of the Motor Vehicles Act aggrieved by the orders passed by the Motor Accidents Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad (for short 'the Tribunal), in O.P.No.2317 of 2000 dated 16.02.2004, on the ground that the amount awarded by the Tribunal is excessive.

3. MACMA.No.1378 of 2011 is filed by the injured claimant under Section 173 of the Motor Vehicles Act aggrieved by the orders passed by the Motor Accidents Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad (for short 'the Tribunal), in O.P.No.2317 of 2000 dated 16.02.2004, for the injuries sustained by him and for the meager amount awarded by the Tribunal.

4. The brief facts of the case are that the injured claimant is railway labour and earning Rs.4,000/- per month. On 31.05.1999 at about 05.20 PM, while he and his friend Yadagiri were proceeding on a bicycle from Pembrothy, Warangal towards railway gate, a semi luxury bus bearing No.AP-36-U-3144 came from behind in a rash and negligent manner with high speed and dashed the claimant's bicycle, due to which he fell down and

sustained grievous injuries besides fractures and severe head injury. The police Janagaon PS registered a case in crime No.42 of 1999. The claimant was initially admitted in Government Hospital, Janagaon, later shifted to NIMS Hospital and for better treatment further shifted to CDR Hospital. He had a prolonged treatment in the hospital and in view of the grievous injuries he became sexually impotent and his digestive system and urination system got damaged. Basing on the evidence of PWs.1 & 2 and Exs.A1 to A9, the claimant claimed a sum of Rs.6,50,000/-.

5. The respondents denied the claim as the same is excessive and also contended that they are not entitled to pay the amounts.

6. The Tribunal after recording the witnesses and marking the exhibits has awarded a sum of Rs.4,40,000/- with rate of interest at 6% per annum under the following heads i.e., pain and suffering Rs.40,000/-, Rs.1,20,000/- towards medical bills, Rs.34,000/- towards loss of past income, Rs.2,16,000/- towards disability, Rs.5,000/- towards transportation charges, Rs.5,000/- towards extra nourishment and Rs.20,000/- towards loss of amenities.

7. Sri Prasanth, learned counsel, representing Sri Vasudev Reddy, learned counsel appearing for APSRTC contended that the amount awarded by the Tribunal is excessive, the disability certificate is not issued by any Doctor and no such certificate is filed in proof of disability and awarded the amount under said head is unjust and no proof of income is filed and the liability to be

fastened on the APSRTC, owner of the vehicle and the insurance company with condition of pay and recover as per the judgment of the Apex Court in **Managing Director, Karnataka State Road Transport Corporation Vs. New India Assurance Company Limited & Others**¹ and prayed that the amount awarded by the Tribunal has to be rejected and the OP has to be dismissed by allowing the appeal.

8. Sri T. Ramulu, learned counsel appearing for the Insurance Company supported the arguments of APSRTC and also relied on the judgment of the Apex Court in **KSRTC supra**.

9. Sri C. Vikram Chandra, learned counsel appearing for the injured claimant contended that he was working as a railway coolie on daily wages at Rs.200/- per day and Ex.A9 is railway coolie license and as per the evidence of PW.2 who deposed permanent disability of 100% which has been categorically explained in evidence has to be considered and appropriate compensation under said heads needs to be awarded. Regarding pain and suffering, loss of earnings and the interest awarded by the Tribunal is on the lower side and the same needs to be enhanced and towards pain and suffering Rs.60,000/- needs to be considered and towards loss of earnings he has suffered for 34 months without any employment and thus loss of earnings has to be calculated in terms of the income claimed at Rs.4,000/- per month and accordingly prayed to fix just and fair compensation.

¹ 2015 (6) ALD 166 (SC)=2016 (2) SCC 382

10. Admittedly the accident has taken place and the crime vehicle-APSRTC is insured with the respondent Insurance Company. The respondents have failed to examine the driver of the crime vehicle to prove the manner of the accident. In view of the charge sheet-Ex.A2 and basing on the evidence of PW.1, this Court has no hesitation to fix the liability on the respondents holding the point for consideration that the claimant is entitled for compensation as just claim.

11. So far as fixing the quantum is concerned, the Tribunal erred in awarding disability in the absence of the disability basing on the evidence of PW.2 and awarding of compensation under the said head is denied. The medical bills of Rs.1,20,000/- awarded by the Tribunal were as per Exs.A4 & A5 is considered to be correct and the same is confirmed. Regarding the head of pain and suffering, the Tribunal awarded Rs.40,000/- and the same is enhanced to Rs.60,000/-. Regarding the head of loss of earnings, the Tribunal awarded Rs.34,000/-, since the same is meager, the same to be enhanced at the rate of Rs.4,000/- per month for 34 months which comes to $\text{Rs.4,000/-} \times 34 = \text{Rs.1,36,000/-}$ is fixed towards loss of past income. Since there is no functional disability and the claimant is working as a coolie, the head of disability as indicated above is denied. However for the disability occurred under the head of loss of amenities of life i.e., towards his sexual impotency and his wife deserted him for the said reason, the Tribunal has awarded Rs.20,000/- which is meager, this Court

feels that awarding of Rs.3,00,000/- under the said head would be reasonable. Thus, the total compensation comes to Rs.6,16,000/-. The enhanced amount shall bear 7.5% rate of interest per annum from the date of petition till realization.

12. Accordingly and in the result, MACMA.No.1378 of 2011 filed by the injured claimant is allowed by enhancing the amount awarded by the Tribunal to Rs.6,16,000/- from Rs.4,40,000/- with rate of interest at the rate of 7.5% per annum and CMA.No.1579 of 2014 filed by the APSRTC is allowed in part by fastening the liability on all the respondents in OP and the respondents shall pay the amount jointly and severally and they shall pay and recover in the light of the Apex Court judgment in **KSRTC supra**.

Miscellaneous petitions if any shall stand closed.

Date: 14.10.2019
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T.AMARNATH GOUD, J