

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MA.CMA.NO.811 OF 2005

JUDGMENT

This appeal is filed against the judgment and decree dated 03.01.2005 passed by the court of Motor Vehicle Accident Claims Tribunal – cum – XXI Additional Chief Judge cum VII Additional MSJ for CCC Red Hills, Nampally, Hyderabad in O.P.No.707 of 2001, wherein and whereby, the Tribunal dismissed the claim petition filed by the claimant under Section 166 of the Motor Vehicles Act, 1988.

In the claim petition it is stated that on 23.1.2001, at about 15-00 hours, the claimant came to Balanagar on his personal work and was waiting to take a bus. Meanwhile, a bus of the Road Transport Corporation (for short 'the Corporation') bearing No. AP 10 Z 1765, came in high speed and dashed against the claimant, causing injuries to him. The further case of the claimant is that the driver of the bus drove the vehicle in a rash and negligent manner at a very high speed and dashed against the claimant even without considering that the place is identified as bus stop. As a result of the accident, he sustained injuries and lost his business during the period of treatment and bed rest. The family of the claimant has passed through agonic situation. Therefore, the claim petition was filed under Section 166 of the Act, claiming compensation of Rs.1,00,000/- with interest and costs.

Counter affidavit has been filed on behalf of the respondent – Corporation, opposing the averments made in the claim petition, and stating that accident never happened and that even otherwise the claim of the claimant is highly excessive and, therefore, the claim petition was sought to be dismissed.

Based on above pleadings, the Tribunal framed the following issues for trial:

1. Whether the accident in question has taken place on account of rash and negligent driving on the part of the driver of the RTC bus bearing No. AP 10 Z 1769 belonging to the respondent – Corporation?
2. Whether the petitioner is entitled to the compensation and if so to what amount from the respondent – Corporation?
3. To what relief?

In support of the case of the claimant, he got examined himself as P.W.1 and also got examined P.W.2, who is said to be the eye witness and P.W.3, the doctor who treated him. The claimant got marked Exs.A-1 to A-9.

On behalf of the Corporation, the driver of the bus, alleged to have been involved in the accident, was examined as R.W.1 and the conductor of the said bus was examined as R.W.2. They got marked Ex.B-1, which is the SR maintained by R.W.2.

The Tribunal, appreciating the entire evidence, both oral and documentary evidence, held that the claimant failed to prove that he sustained injuries in road traffic accident involving the RTC bus and dismissed the claim petition. Aggrieved by the same, the claimant filed the present appeal.

The counsel for the appellant is one Mr.K.L.N.Rao. During the pendency of the appeal, he expired. Therefore, notice was sent to the appellant, to the address given in the claim petition and in the appeal. The said notice was returned un-served with an endorsement 'no such person'.

Sri N.Vasudeva Reddy, learned Standing Counsel for the Corporation made his submissions supporting the impugned judgment.

The case of the claimant is that on 23.1.2001 at about 15-00 hours, while he was waiting to take a bus at Balanagar bus stop, bus of the Corporation bearing No. AP 10 Z 1765 came in high speed and dashed against him, causing injuries. The respondent – Corporation in the counter affidavit, has categorically

denied involvement of the bus of the Corporation in the alleged accident. As the Corporation has denied the accident itself, the burden is on the claimant to prove that the bus of the Corporation caused the accident and that he sustained injuries in the said accident.

The accident is alleged to have occurred on 23.1.2001, but the claimant lodged complaint on 6.2.2001. In the complaint, Ex.A-1, he stated that he was waiting at Narsapur Chowrastha – Balanagar bus stand at about 4-15 p.m., and that when he tried to board the bus to go to his village, bus bearing No. AP 10Z 1769 of Jeedimetla depot, dashed him. In the examination before the court as P.W.1, he deposed that on 23.1.2001, at about 16-15 hours, when he was at Narsapur x road bus stop and getting into RTC bus to go to Shapur from there to go to his village Jinnaram, in the mean time, RTC bus bearing No. AP 10Z 1769 went at high speed being driven in a rash and negligent manner, dashed another stopped RTC bus, as a result, he was sandwiched between the two buses.

P.W.2 is claimed to be the eye witness. He deposed that he saw P.W.1 already got into the bus bearing No. AP 10 Z 1769 and the bus started moving and tried to over take the stationed bus, in that process, the front portion of the bus in which the petitioner traveled moved ahead and the rear portion of the said bus struck to the body of the stationed bus, as a result of which, claimant fell down with injuries.

P.W.2 is cited as L.W.3 in the charge sheet. The Tribunal on a perusal of the statement of P.W.2 to the police and before the court, found that they are in complete variance.

Thus a reading of the above versions of versions of P.W.1 in Ex.A-1 FIR, and before the court, would go to show that they are at variance, and this creates any amount of doubt with regard to accident as alleged by the claimant involving the bus of the Corporation.

In the counter affidavit, the Corporation has categorically denied the occurrence of the accident and involvement of their bus. R.Ws.1 and 2 are the driver and the conductor of the said bus. R.W.1 deposed that on 23.1.2001, he performed all the trips including trip from Narsapur to Latnayapalle village and after completion of his duties, brought back the bus and kept in Jedimetla depot and that the bus was not involved in the accident.

R.W.2 is the conductor of the bus. He deposed that on that day i.e., 23.1.2001, R.W.1 and he, both came for duty at 1.20 p.m. He completed eight hours duty on that day at 20.50 hours; on that day their bus was not involved in any accident; that as a conductor, he has to enter in SR whenever there is an accident as per their instructions; that every conductor enters details of accident, if any, in SR; they should also take the statement from the passengers regarding occurrence of accident and; that since no accident took place on that day, he did not make any entry in Ex.B-1 - SR.

Thus, both R.Ws.1 and 2 categorically deposed that their bus was not involved in the accident, as alleged by the claimant. Though they were cross-examined, nothing could be elicited to disprove their testimony in the examination in chief.

Appreciating the entire evidence, both oral and documentary, the Tribunal categorically held that accident did not take place either due to rash and negligent driving on the part of the RTC bus bearing No. AP 10 Z 1769, belonging to the respondent – Corporation, or involving RTC bus. This being finding of fact, cannot be interfered with in the absence of any contra evidence.

As the claimant failed to establish that he sustained injuries in road traffic accident involving the RTC bus, the Tribunal dismissed the claim petition and I do not find any illegality or irregularity in the impugned judgment, and the appeal is accordingly dismissed.

Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

A.RAJASHEKER REDDY,J

DATE:28—03—2019
AVS

