

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.No.3737 OF 2005

AND

M.A.C.M.A.No.1869 OF 2006

COMMON JUDGMENT:

MACMA No.3737 of 2005 is filed by the claimant and MACMA No.1869 of 2006 is filed by RTC against the judgment and decree, dated 02.08.2005 passed in O.P.No.1003 of 1999 by the I Additional Motor Accidents Claims Tribunal, Nizamabad (for short 'the Tribunal).

2. Since both the appeals arise out of the same O.P, they are heard together and disposed of by way of this common judgment.

3. For the sake of convenience, the parties herein are referred to as arrayed before the tribunal.

4. It is the case of the injured claimant that on 08.11.1998, he along with his friend was coming on scooter bearing No. AP 25 A 6941 from Armour to Nizamabad, when they reached near Dhobighat at about 06.00 p.m, the driver of RTC bus bearing No. AEZ 1751 belongs to Korutla depot drove the bus in a rash and negligent manner at high speed came in opposite direction and dashed the scooter, due to which the petitioner, who was sitting on back side of the scooter and the driver of the scooter fell down and the petitioner sustained fracture and bleeding injuries, immediately, the petitioner was shifted to the Government Hospital, Armour and later shifted to Nizamabad and took treatment in the hospital of Dr Bhupathi Reddy as in patient for one month by incurring Rs.80,000/- and that under went four operations and that the petitioner is Government servant and earning Rs.5,200/- per month and that due to the accident, the petitioner became permanently disabled and unable to attend to his regular work.

5. Respondents 2 and 3, who are Depot Manager and Chairman of RTC denied the contentions of the petitioner and submitted that while RTC bus covered 3/4th of culvert, the scooterist coming from opposite direction came in a rash and negligent manner and dashed against the front portion of the right side of the bus, without waiting for the bus to cross the culvert and hence, the scooterist himself is responsible for the accident and not RTC bus driver.

6. In order to prove the case of the claimant, PWs.1 to 3 were examined and marked Exs.A1 to A.88 on his behalf. No oral or documentary evidence is adduced on behalf of the respondents in support of their contentions. Basing on the pleadings, oral and documentary evidence, the tribunal framed the following issues:

- 1) Whether the accident occurred on 08.11.1998 due to rash and negligent driving of the APSRTC bus bearing No. AEZ 1751 driven by its driver?
- 2) Whether the petitioner is entitled to compensation? If so, to what amount and from whom?
- 3) To what relief?

7. On considering the oral and documentary evidence, the tribunal granted Rs.3,70,000/- as against the claim of Rs.5,00,000/-.

8. Learned counsel appearing for the claimant contended that the compensation granted by the tribunal is very meagre and that the tribunal failed to consider the shortening of leg by 1 ½ inch and that the tribunal erred in restricting amount under the head of continuous disability and hence, prayed to grant just and proper compensation.

9. Learned standing counsel for RTC contended that the compensation granted by the tribunal is highly exorbitant and excessive

and that the accident occurred due to rash and negligent driving of the scooterist at high speed, but not due to the driver of RTC bus and that the tribunal erred in not advertent to the contributory negligence on the part of the scooterist and that there was only fracture to the right lower limb besides bleeding injuries, but not permanent partial disability and hence, prayed to set aside the judgment passed by the tribunal.

10. It is the case of injuries. There is no dispute with regard to the manner of accident and involvement of the vehicle. The judgment passed by the tribunal is well considered except on permanent and continuing disability, attendant charges and deformity. Though the petitioner is in Government service, no proof of income is filed. However, in pursuance of Exs.A.74 to A.82, it can be presumed that the petitioner is earning Rs.5,200/- per month. As per the evidence of PW.1, the age of the deceased is 38 years. PWs.2 and 3 stated that they treated the petitioner and performed surgery and that there is shortening of right lower limb by 1 ½ inch and that the petitioner was hospitalised for 35 days and underwent three surgeries and in future removal of plates is necessary. The petitioner was on leave for 10 months 10 days. In view of the evidence of PWs.2 and 3 and basing on Ex.A.85-wound certificate, the disability can be considered as 40%. Since the age of the petitioner is 38 years as on the date of accident, as per the decision of the Apex Court in **Sarala Verma and others v Delhi Transport Corporation and another**¹, the relevant multiplier is '15'. The annual income of the deceased is Rs.62,400/- (Rs.5,200/- x 12). Thus, the permanent and continuing disability comes to Rs.3,74,400/- (Rs.62,400/- x 15 x 40/100). In view of the gravity of injuries and treatment awarding attendant charges for the period of two months @ Rs.100/- per day comes to Rs.6,000/-, put

¹ 2009 ACJ 1298

together Rs.1,00,000/- is granted towards attendant charges, loss of amenities and deformity. Thus, the petitioner is entitled for the following compensation:

Sl.No.	Description	Compensation granted by the Tribunal	Compensation granted by this Court
01)	Permanent and Continuing disability	Rs. 2,00,000/-	Rs.3,74,400/-
02)	Pain and suffering	Rs. 40,000/-	Rs. 40,000/-
03)	Actual loss of earnings	Rs. 53,730/-	Rs. 53,730/-
04)	Medical Expenses	Rs. 63,415/-	Rs. 63,415/-
05)	Transport Expenses	Rs. 1,200/-	Rs. 1,200/-
06)	Future Medical Expenses	Rs. 12,000/-	Rs. 12,000/-
07)	Loss of amenities and Deformity	----	Rs.1,00,000/-
Total		Rs.3,70,345/-	Rs.6,44,745/-

11. Thus, the claimant is entitled for compensation of Rs.6,44,745/-, which rounded to Rs.6,45,000/-. The enhanced compensation shall carry interest @ 7.5% per annum from the date of petition till the date of realisation. Though the claim is made for Rs.5,00,000/- in order to grant just and proper compensation for the reasons indicated above and in the light of the decision of the Apex Court in **Nagappa v Gurudayal Singh²** the compensation awarded can be more than the claim, the present appeal needs to be allowed. RTC is directed to deposit the compensation amount within three months from the date of this judgment. The injured claimant is entitled to withdraw the compensation amount soon after the deposit is made. The injured

² 2003(2) SCC 274

claimant has to pay deficit Court fee on over and above the claim amount and if the deficit Court fee not paid as per Rule 475 of the M.V. Rules before the Tribunal, the injured claimant cannot be permitted to execute for the enhanced amount.

12. In view of the above, M.A.C.M.A.No.3737 OF 2005 filed by the claimant is allowed and M.A.C.M.A.No.1869 of 2006 filed by RTC is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any pending in these appeals shall stands closed.

Date 12.09.2019
kvrn

T.AMARNATH GOUD,J

