

HONOURABLE SRI JUSTICE A. RAJASHEKER REDDY

M.A.C.M.A.No. 3227 of 2005

JUDGMENT:

- 1) The present appeal is filed under Section 173 of Motor Vehicles Act, against the judgment and decree, dated 18.03.2005, in O.P.No.310 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal (V Additional District Judge), Nizamabad, for enhancement of the compensation by the appellant-injured.
- 2) The appellant is the petitioner and the respondent No.1 is the owner and respondent No.2 is the Manager of the RTC bus involved in the accident, before the Tribunal.
- 3) For the sake of convenience, the parties are hereinafter referred to as they are arrayed in the O.P. before the tribunal.
- 4) The facts in brief are as under:

The petitioner filed O.P.No. 310 of 2001 seeking compensation of Rs.2,00,000/- for the injuries sustained by him in a road accident that occurred on 03.04.1999 while the petitioner and one G.Srinivasa Gowd were proceeding on Scooter bearing No. AP 25 T 5647 from Indalwai Village to Gouraram Village, when they reached near Lingapur Vagu at about 10.30 p.m., one RTC bus bearing No.AP-10Z-3559 driven by its driver in a rash and negligent manner with high speed and dashed against the scooter. As a result of which, the petitioner fell down and sustained fracture of right femur, fracture of pelvis and grievous injuries all over the

body. Immediately, the petitioner was shifted to Government Hospital, Nizamabad. Thereafter, he was shifted to Nizam Orthopedic Hospital, where he took treatment from 03.04.1999 to 28.04.1999 and incurred a sum of Rs.50,000/- towards medical expenses. The accident occurred only due to rash and negligent driving of the driver of the RTC bus.

It is stated that due to the injuries sustained by him in the accident, he sustained disability and lost his income. Therefore, the petitioner estimated his claim to the tune of Rs.6,51,000/- under various heads which are as under:

FOR SPECIAL DAMAGES:

a) Compensation for loss of earnings	Rs.2,00,000-00
b) Transport charges and medical expenditure	Rs. 50,000-00
c) Damage caused to the scooter	Rs. 1,000-00

FOR GENERAL DAMAGES

a) Compensation for pain and suffering	Rs. 2,00,000-00
b) Compensation for permanent disability	Rs. 2,00,000-00

Total:	Rs. 6,51,000-00

But the petitioner restricted his claim to a sum of Rs.2,00,000/- and both the respondents are liable to pay the same being owner and the Manager of the Crime vehicle-bus respectively.

5) Respondent Nos.1 and 2 filed common written statement denying the mode of the accident, nature of injuries sustained by

the petitioner, age, avocation and income of the petitioner. It is also stated that at the time of accident the rider of the scooter drove it in a rash and negligent manner and the driver of the bus slowed down the speed of the bus and took the bus to the left side of the road, but the rider of the scooter could not control the scooter and dashed front side of the bus and fell down on the road. It is also stated that the claim of the petitioner is excessive and hence prayed to dismiss the petition.

6) Basing on the pleadings in the petition and written statement, the tribunal framed the following issues:

- i) Whether the motor vehicle accident occurred due to the rash and negligent driving of the vehicle/ RTC bus bearing No. AP 10 Z 3559 by its driver resulting in injuries to the petitioner?
- ii) Whether the petitioner is entitled for compensation? If so, what amount and from which of the respondents?
- iii) To what relief?

7) In order to prove his claim, the claimant got examined himself as PW.1, the eye witness as PW.2 and the doctor as PW3 and got marked Exs.A1 to A8. Neither oral nor documentary evidence was adduced on behalf of the respondents.

8) Considering the evidence on record, the claims tribunal awarded compensation of Rs.10,750/- in favour of the petitioner and against the respondents with interest @ 9% per annum from the date of petition till date of realization. Challenging the

quantum of compensation awarded by the Tribunal, the petitioner, who is the claimant, filed the present appeal.

9) Learned counsel for the appellant/petitioner submits that though PW.3-the doctor, who treated the petitioner was examined and he deposed that the petitioner incurred Rs.46,750/- towards medical expenses and the petitioner requires further operation for removal of rod and the petitioner has to incur approximately Rs.25,000/- for further operation. He also submits that the petitioner was earning Rs.250/- per day and he lost his earnings for a period of three months. But without considering the same, only an amount of Rs.10,750/- was granted by the Tribunal.

10) Sri N.Vasudeva Reddy, learned Standing Counsel for the respondent would submit that there is no basis for the doctor to depose that the petitioner incurred such amount and he requires another amount of Rs.25,000/- for removal of the rod and basing on that oral evidence, the said amount cannot be granted but however the Tribunal granted reasonable amount.

11) In this case, all the issues are held in favour of the appellant and the appeal is only for enhancement of compensation, this Court need not go into other aspects except the issue of enhancement of compensation.

12) In this case, admittedly PW.3, the doctor, who treated the petitioner, categorically deposed that the petitioner suffered fracture of shaft femur right, fracture of pelvis and injury to the bladder. He was referred to Gandhi Hospital, Hyderabad. He

operated the petitioner for the fracture of femur by inserting a rod and the petitioner was discharged on 28.04.1999. He also deposed that the appellant incurred Rs.46,750/- and requires further operation for removal of the rod, which approximately cost Rs.25,000/-. The X-rays produced by the appellants were also not believed by the Tribunal.

13) A reading of the judgment of the Tribunal, the Tribunal has not awarded any amount regarding medical expenses though the bills were marked. As such, an amount of Rs.20,000/- can be granted towards medical expenses and Rs.20,000/- for further operation. Under the head of pain and suffering, the Tribunal granted only a sum of Rs.5,000/-, the same is increased to Rs.20,000/-. Admittedly, the petitioner sustained three grievous injuries. As such an amount of Rs.20,000/- can be granted for the injuries sustained by him. Apart from that an amount of Rs.15,000/- can be granted under the head extra nourishment. Admittedly, the petitioner was earning Rs.250/- per day. Though the Tribunal observed that he could not work for three months but no amount was awarded towards loss of earnings. Therefore, an amount of Rs.22,500/- can be awarded towards loss of earning for a period of three months. Thus, in all the petitioner is entitled to Rs.1,17,500/-.

14) Accordingly, the Appeal is allowed in part by enhancing the compensation from Rs.10,750/- to Rs.1,17,500/- with interest at

7.5%p.a. from the date of petition till the date of realization and in all other respects the order of the Tribunal is confirmed.

15) As a sequel, miscellaneous applications pending, if any, shall stand closed. There shall be no order as to costs.

A. RAJASHEKER REDDY, J

02.04.2019
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