

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA No.1332 of 2010

JUDGMENT:

This appeal is filed by the appellant-Andhra Pradesh State Road Transport Corporation against the order dated 19-01-2010 in OP.No.168 of 2008 on the file of Motor Accident Claims Tribunal-cum-IV Additional District Judge (FTC) Warangal (for short "the Tribunal), wherein and whereby the Tribunal granted an amount of Rs.90,000/- out of claim of Rs.2.00 lakhs made by the respondent/claimant in respect of injuries sustained by him in a road accident arising out of the bus belonging to the appellant-Corporation.

2. The appellant herein is the respondent, while respondent is the petitioner, in the O.P. before the Tribunal.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the Tribunal.

4. The facts, in brief, are that petitioner is an agriculture labourer and shepherd. That the petitioner used to earn Rs.3,000/- per month. On 30-12-2016 petitioner boarded RTC bus bearing No.AP 10-Z-300 at Vomula bus stage to go to Raghunathpally Village. When the said bus reached the outskirts of Raghunathpally at about 10.00 pm in front of electricity bus station, the conductor of the bus ordered to

stop the bus. On that the bus was taken towards left side of the road margin and the driver of the bus suddenly applied the breaks. Due to which petitioner fallen down from the bus and rare tyres of the bus ran from his both legs and sustained greivous injuries. The driver of the bus drove the bus in a rash and negligent manner and lost control over the same and caused the accident. Then the petitioner was shifted to the Government hospital, Janagaon and later referred to the M.G.M.hospital, Warangal. There the petitioner has taken treatment from 30-12-2006 to 04-02-2007 and he joined in Hariteja Hospital on 04-02-2007 for better treatment and he was there from 04-02-2007 to 17-02-2007. The petitioner sustained fracture to both bones of lower 1/3rd of right leg, fracture on the right mandual malleolous. On that the wife of petitioner gave complaint to the Raghunathpally police, who registered a case in Cr.No.90 of 2006. The petitioner claimed special damages of Rs.18,000/- towards loss of earnings, Rs.2,000/- towards transportation and extra-nourishment, Rs.36,000/- towards medical expenses and further claimed general damages Rs.1,44,000/- in total he claimed for Rs.2,00,000/- towards compensation.

5. The respondent filed counter denying the allegations made in the petition. He further contended that while the bus was stopping on the left side of the road at request of the

petitioner, in the meanwhile the petitioner hurriedly got down the bus while it was running. As a result, the petitioner fell down on the road and sustained injuries to his legs and the accident was occurred only due to negligence of the petitioner. As such, there is no negligence on the part of the bus driver. It is also stated that the claim made by the petitioner is an excessive one and as such prayed to dismiss the petition.

6. The Tribunal framed the following issues:

1. Whether the accident took place on 30-12-2006 due to rash and negligent driving of A.P.S.R.T.C. bus bearing No.AP 10-Z-300?
2. Whether the petitioner is entitled for compensation? If so, to what amount and from whom?
3. To what relief?

7. During enquiry, the petitioner himself was examined as PW.1, PW.2 is Doctor who treated PW.1 and ExsA-1 to A-8. and Ex.X.1 were marked. On behalf of respondent, driver of crime vehicle was examined as RW.1.

8. The Tribunal basing on the evidence of PWs.1 and 2 and Exs.A1 and A3 held that the accident occurred due to negligence of RW.1 and granted an amount of Rs.90,000/- towards compensation. Against the same, the appeal is preferred by the appellant-Corporation.

9. Learned counsel for the appellant submits that there is no negligence on the part of driver of the appellant in driving the bus, it is the respondent who has got down from the moving bus. As such no compensation could have been awarded. There is contributory negligence on the part of respondent and some amount should have been deducted towards contributory negligence by the respondent-claimant. He also submits that the quantum of compensation is excessive and the same is granted without any documentary evidence and the same has to be reduced.

10. Heard learned counsel for respondent/claimant.

11. In this case it is to be seen that while answering the issue No.1 the Tribunal after considering the evidence of PW.1 claimant and RW.1 also considered Ex.A.1 certified copy of F.I.R., Ex.A.2 Certified copy of wound certificate, Ex.A.3 certified copy of radiologist report and Ex.A.4 certified copy of charge sheet and found that the driver of the appellant-Corporation drove the vehicle in a rash and negligent manner. The Tribunal also found that the driver of the appellant-Corporation should have stopped the vehicle by applying sudden break, but in this case no such attempt was made. It is also found that while the petitioner was getting down from the front side door, the driver was negligent and without observing the same moved the crime vehicle negligently due to which the petitioner fallen down on the road and rear

wheels of the crime vehicle ran over on his both legs and caused severe injuries. As RW.1 did not take care, the respondent/claimant suffered injuries. A perusal of para No.8 of the judgment of the Tribunal goes to show that the Tribunal has considered the evidence in proper perspective and held that the RW.1 was at negligence and as such the accident occurred. In view of the same, this Court is not inclined to interdict the said finding.

12. As far as quantum of compensation, the respondent/claimant suffered two fractures i.e. right leg and right ankle and the Tribunal found that the respondent/claimant was in hospital for six months and granted an amount of Rs.14,400/- (Rs.2400 x 6) while the respondent/claimant was taking treatment. It is the case of the petitioner that he used to earn Rs.3,000/- per month as an agriculture labourer and shepherd. Even then the income of the respondent/claimant was taken at Rs.2400/- per month by the Tribunal, which is not on higher side in view of the judgment of Apex Court in ***Ramachandrappa v. The Manager, Royal Sundaram Aliance Insurance Company Limited (AIR 2011 Supreme Court 2951)***, Wherein the Apex Court held as under:

“ In the instant case, it is not in dispute that the appellant was aged about 35 years and was working as a Coolie and was earning Rs.4,500/- per month at the time of accident. This claim is reduced by the Tribunal to a sum of Rs.3,000/- only on the assumption that wages of the

labourer during the relevant period viz. in the year 2004, was 100/- per day. This assumption in our view has no basis. Before the Tribunal, though Insurance Company was served, it did not choose to appear before the Court nor did it repudiated the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning a sum of Rs.3,000/- per month. Secondly, the appellant was working as a coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant. We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guess work, which may include the ground realities prevailing at the relevant point of time. In the present case, appellant was working as a Coolie and in and around the date of the accident, the wage of the labourer was between 100/- to 150/- per day or Rs.4,500/- per month. In our view, the claim was honest and bona fide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the appellant from 4,500/- to 3,000/- per month. We, therefore, accept his statement that his monthly earning was '4,500/'."

13. The Tribunal found that since the respondent/claimant suffered fractures and nearly about two and half months, he was in hospital as in-patient and due to fractures, he may not attend the agricultural labour work for a period of one year as usual and he sustain loss of his earnings in future. As

such the Tribunal has rightly granted an amount of Rs.41,600/- towards pain and suffering and loss of future earnings. Though as contended by learned counsel for the appellant that amount of Rs.41,600/- towards pain and suffering and loss of future earnings appears to be on higher side, only an amount of Rs.2,000/- is granted towards transportation and extra-nourishment, which is on lower side and the same are to be maintained. As far as medical expenses are concerned, the bills were produced for Rs.32,000/- by the petitioner and the same was granted by the Tribunal, since the appellant-Corporation also did not deny the genuineness of the said bills.

14. In view of the same, I do not see any reason to accept the contention of the appellant that the compensation granted is on higher side, since the amount granted towards pain and suffering and loss of earnings is on higher side, the amount granted towards transportation and extra-nourishment is on lower side and there is no need to interfere with the award of the Tribunal on the said heads. As such, this Court is of the opinion that the Tribunal has granted just compensation keeping in view of the injuries suffered by the petitioner and loss of income while he was in hospital and loss of future earnings etc.,

15. Accordingly, the appeal is dismissed. There shall be no order as to costs. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

A.RAJASHEKER REDDY, J

21-02-2019

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