

HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. Nos.558 OF 2010 & 1788 OF 2011

COMMON JUDGMENT:

These Motor Accident Civil Miscellaneous Appeals are arising out of the order, dated 03.08.2009 passed in Original Petition No.1431 of 2007 on the file of the Court of V Additional Metropolitan Sessions Judge, Mahila Court at Hyderabad (for short, 'the Tribunal').

2. MACMA.No.558 of 2010 was filed by Andhra Pradesh State Road Transport Corporation (APSRTC) for setting aside the award of the Tribunal. MACMA.No.1788 of 2011 was filed by the claimant for enhancement of the compensation. Both the appeals are heard together and are being disposed of by this common judgment, since they are arising out of the same accident.

3. For the sake of convenience, the parties are referred to as appellant and APSRTC.

4. Heard Sri K.Hari Mohan Reddy, learned counsel for the appellant and Sri N.Vasudeva Reddy, learned Standing Counsel for APSRTC.

Brief facts of the case:

5. On 23.01.2007 while the appellant along with his friend were going slowly on the left side of the road on his motorcycle bearing No.AP22K 4573 from their bunk to hotel, and when they reached near Bharath Petrol Pump, one APSRTC bus bearing No.AP11Z 4799 came in a rash and negligent manner and dashed against the motorcycle. They fell down and sustained injuries. The claimant received fracture to his right leg and thigh. He has also received

injury to his head. He was shifted to Osmania General Hospital, and then to Care Hospital. He had also taken treatment in Apollo and NIMS hospitals. The police registered a case in Crime No.35 of 2007 against the driver of the bus for his rash and negligent act. The appellant was working as a salesman in a petrol bunk and was earning Rs.3,500/- per month by the date of accident. Due to the injury sustained by him in the accident, he suffered disability and lost his earning capacity, and therefore, he claimed compensation of Rs.5,00,000/- against the APSRTC. In the said OP, the APSRTC filed its counter denying the rash and negligent act on the part of the driver of the bus. It is stated in the counter that on 23.01.2007 at about 10.00 am., the bus bearing No.AP11Z 4799 was coming from Raichur to Hyderabad. When the bus reached to Shadnagar, one motor cyclist bearing No.AP22K 4573 came in the opposite direction and by overtaking a lorry in a rash and negligent manner and dashed the bus on its right side. The police registered the case against the driver of the bus due to the influence of the petitioner. The petitioner is not entitled for any compensation and sought for dismissal of the OP.

Award of the Tribunal in O.P.No.1431 of 2007:

6. The Tribunal has framed two issues and answered the issue in respect of rash and negligent act in favour of the appellant holding that the driver of the bus had driven the bus in a rash and negligent manner and was responsible for the accident. In respect of second issue, the Tribunal has awarded compensation of Rs.1,66,000/- on account of the injuries sustained by the appellant in the accident.

7. The following points arise for consideration in these matters:
- (i) Whether there is rash and negligent act on the part of the driver of the motorcycle of the appellant?
 - (ii) Whether the claim petition is bad for non-joinder of owner and insurer of the motorcycle of the appellant?
 - (iii) Whether the appellant is not required to plead or attribute rash and negligent act on the part of the driver of the bus, even though the claim petition was presented under Section 166 of the Motor Vehicle Act? and
 - (iv) Whether the appellant is entitled for enhancement of compensation?

Arguments:

8. The learned Standing Counsel for the APSRTC contends that the accident occurred due to the rash and negligent driving of the rider of the motorcycle. The rider of the motorcycle, while trying to overtake the lorry in a rash and negligent manner, dashed the bus on his right side. The judgment of the Tribunal reveals that it had appreciated the evidence of P.W.1, and taking into consideration the documents Exs.A.1 and A.2, arrived at a proper conclusion holding that the driver of the bus is responsible for the accident. Therefore, there are no valid grounds to interfere with the findings of the Tribunal in this regard.

9. As the negligence on the part of the rider of motorcycle is not proved, adding of the rider and insurer of the motorcycle in the OP loses its significance.

10. The learned Standing Counsel for the APSRTC further contends that the Tribunal, in para 8 of its award, has stated that as per Section 163-A of the Motor Vehicles Act, 1988 (for short, the Act), a claimant is not required to plead or establish rashness or negligence on the part of the driver of the crime vehicle. It is sufficient, if it is established that the crime vehicle was plying on the road at the time of accident.

Findings in this appeal:

11. This observation of the Tribunal is only a passing remark. The Tribunal did not decide the issue of rash and negligent act basing on Section 163-A of the Act. It is obvious that the Tribunal has framed one issue in respect of proof of rash and negligent act. The Tribunal has clearly held the issue against the APSRTC basing on the testimony of P.W.1 in para No.10 of its order, which reads as follows:

“10. However, the petitioner as P.W.1 stated in his affidavit evidence in chief examination that on 23.1.2007 at about 10 a.m., while himself and his friend were going slowly on the left side of the road on his motor cycle bearing No.AP 22 K 4573 from their bunk to Hotel and when they reached near Bharath Petrol Pump, one APSRTC Bus bearing No.AP 11 Z 4799 came in a rash and negligent manner and dashed against the motor cycle. P.W.1 was vehemently cross examined by the learned counsel for the respondents. P.W.1 denied in his cross examination that he did not meet with the accident. He denied that the APSRTC Bus driver was not negligent or rash in driving the bus. Except giving suggestions, the learned counsel for the respondents did not extract any point to discredit his evidence. The evidence of P.W.1 proves that the accident occurred due to the rash and negligent driving of the bus driver.”

12. Therefore, there is clear finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of the bus. Hence, the Tribunal has taken into consideration Section 163-A of the Act, though the OP was filed under Section 166 of the Act.

13. In view of the foregoing reasons, issue Nos.1 to 3 are answered in favour of the appellant and against the APSRTC.

14. Point No.4 is in respect of quantum of compensation challenged by the appellant. Learned counsel for the appellant submitted that the quantum of compensation awarded by the Tribunal is very less. It is contended that the Tribunal did not consider 40% disability suffered by the appellant and the

consequential surgeries undergone by him by inserting steel rods and also the future surgeries for removal of steel rods. He further submitted that the appellant spent Rs.2,00,000/- for his treatment and that the appellant filed Ex.A.12 is the bunch of medical bills and Ex.A.9 prescriptions for the medical bills to prove that aspect. But, the Tribunal has compared the medical bills with the prescriptions and arrived at a conclusion that the appellant is entitled to Rs.1,50,000/- towards medical expenditure.

15. The Tribunal clearly held in para No.15 of its order as follows:

“15. According to the petitioner, he spent Rs.2,00,000/- for his treatment. Ex.A.12 is the prescriptions. The medicine purchased under Ex.A.12 do not tally with the medicine prescribed under Ex.A.9. Though, Ex.A.11 indicates that Rs.45,000/- is required for removal of implants, there is no evidence that the petitioner took treatment in Sai Specialty Clinics and hence, Ex.A.11 is not acceptable. Ex.A.14 is the case sheet, as per which the petitioner spent Rs.74,944/- P.W.3 is the medical Record Assistant in Aditya Hospital. He deposed that the total expenditure incurred by the petitioner is Rs.74,944/-, out of that amount he paid Rs.72,000/-. It is not pleaded in the petition that the petitioner took treatment in Aditya Hospital. Doctor from Aditya hospital was not examined to prove that the petitioner took treatment in the hospital. The accounts of the Aditya hospital is material to prove the payment of amount under Ex.A.14 case sheet. P.W.3 did not bring the accounts of the Aditya hospital. The petitioner also did not take steps to cause production of the accounts of the NIMS Hospital. Accounts of the hospital are the material documents to prove the payment of amount. The petitioner did not take steps to cause production of the accounts of the NIMS Hospital or Aditya hospital. Therefore, the petitioner is not entitled for any amount under Ex.A.12 and Ex.A.14. However, the petitioner received injuries and he took treatment, therefore, he might have spent some amount for his treatment. Therefore, the petitioner is entitled for Rs.1,50,000/- towards medical expenditure. In all the petitioner is entitled for Rs.1,66,000/- towards compensation.”

16. It is obvious from the finding of the Tribunal that the appellant has not produced any evidence with regard to treatment he had undergone in Sai Speciality Clinics and therefore, Ex.A.11

was not accepted by the Tribunal. The medical officer from Aditya Hospital was not examined to prove that the appellant had taken treatment in Aditya Hospital and therefore, those bills were not taken into consideration. On consideration of the evidence, and on verification of the medical bills with the prescriptions, and the nature of the treatment undergone by the appellant, the Tribunal has rightly awarded compensation of Rs.1,50,000/- towards medical expenditure.

17. The Tribunal awarded an amount of Rs.16,000/- for the two grievous injuries suffered by the appellant. The said amount includes pain and suffering. Usually, for each grievous injury, it would be appropriate to award an amount of Rs.20,000/-, which includes pain and suffering.

18. This is a case where the appellant has claimed that he is entitled for 40% disability for the injuries suffered by him in the accident. There is no satisfactory evidence to prove 40% disability, and therefore, the Tribunal has rightly not considered the disability part. But, there is evidence on record to show that the appellant is required to undergo consequential surgeries in future for removal of steel rods. The appellant has to spend some amount in future for removal of steel rods. The Tribunal has not awarded any amount towards attendant charges, extra nourishment and future medical expenses. Therefore, an amount of Rs.40,000/- can be awarded towards extra nourishment, attendant charges and future medical expenses.

19. On consideration of the facts and circumstances of this case, the following compensation is awarded.

Sl.No.	Name of Head	Compensation Awarded by Tribunal	Compensation Awarded by this Court
01.	Grievous injuries	Rs.16,000/-	Rs.40,000/-
02.	Medical expenditure	Rs.1,50,000/-	Rs.1,50,000/-
03.	Extra nourishment, attendant charges and future medical expenses	--	Rs.40,000/-
	TOTAL	Rs.1,66,000/-	Rs.2,30,000/-

20. In the result, MACMA.No.558 of 2010 is dismissed. MACMA.No.1788 of 2011 is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation from Rs.1,66,000/- to Rs.2,30,000/- with subsequent interest @ 7.5% per annum from the date of petition till the realisation. The APSRTC is directed to deposit the amount within two months from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw entire amount. There shall be no order as to costs.

21. As a sequel, miscellaneous petitions, if any, pending shall stand closed.

G.SHYAM PRASAD, J

Date: 03.02.2017
TJMR