

THE HON'BLE SRI JUSTICE PULLA KARTHIK

M.A.C.MA. No.1114 of 2019

JUDGMENT:

This Appeal is filed by the Telangana State Road Transport Corporation challenging the order and decree passed in MVOP No.235/2010 dated 26.10.2018 on the file of Motor Accidents Claims Tribunal-cum- I Additional Chief Judge, City Civil Court, Secunderabad, wherein the Tribunal had awarded the compensation of Rs. 5,34,500/- as against the claim of Rs.9,00,000/- for the injuries sustained by the petitioner in a motor vehicle accident that occurred on 28.08.2009.

2. The case of the respondent/petitioner in brief:

On 28.08.2009 at about 5.15 PM at Moti Nagar bus stop, Borabanda, SR Nagar, Hyderabad, while the respondent herein boarding RTC bus bearing No. AP 28Z 775, route No.19 Y/F from, front door, the driver of the said bus suddenly in a rash and negligent manner with high speed turned the bus and dashed the petitioner's

right shoulder due to which he fell down on the road and the bus ran over his right leg, immediately he was shifted to Gandhi Hospital in 108 ambulance. It is pleaded that the petitioner being an auto driver used to earn Rs.6,000/- per month. It is further pleaded that due to the accident he is unable to attend the same and lost his income.

3. The appellant filed its counter before the Tribunal denying the petition averments against it including method and manner of accident, age, income and profession of the petitioner and it is further pleaded that the accident was occurred due to the negligence on the part of the respondent/petitioner only.

4. On the basis of above pleadings the Tribunal had framed following issues for trial:

1. Whether the pleaded accident occurred resulting in injuries to the petitioner due to the rash and negligent driving of the vehicle (APSRTC bus) bearing No. AP 28 Z 775 by its driver?

2. Whether the petitioner is entitled to any compensation and if so, at what quantum and what is the liability of the respondent?

3. To what relief?

5. To prove his case, the respondent/petitioner got examined himself as PW1 and got examined the doctors, who treated him as PW2 and PW3 and marked Ex.A1 to A9 on his behalf. During the evidence of PW2, Ex.X1 is marked. On behalf of the respondent/appellant no oral or documentary evidence is adduced.

6. On considering the evidence and material on record the Tribunal was pleased to allow the petition in part awarding the compensation of Rs.5,34,500/- to the respondent/petitioner with proportionate costs and interest at 7.5% per annum from the date of filing of the petition till 28.06.2015 and from 17.04.2018 to till the date of deposit against the respondent. The petitioner is not entitled for any interest on the awarded compensation

amount for the interregnum period of dismissal of OP i.e. from 29.6.2015 to 16.04.2018 as tabulated hereunder:

1.	Loss of earnings	Rs.4,59,000
2.	Pain and sufferings	Rs.42,500
3.	Medicines and investigations	Rs.20,000
4.	Transportation	Rs.3,000
5.	Food and extra nourishment	Rs.10,000
	Total compensation	Rs.5,34,500/-

7. Heard both sides and perused the record.

8. The appellant contends that the Tribunal committed irregularity in holding that the accident was occurred due to rash and negligent driving of the driver of the RTC bus bearing No. AP 28 Z 775 without there being any acceptable evidence on record.

9. It is further contended that the Tribunal failed to frame an issue that whether there is any contributory negligence on the part of the injured who tried to board running bus though there was a specific plea taken in their

counter and in the absence of any issue, the Tribunal committed irregularity in holding that there is no contributory negligence on the part of the injured.

10. It is further contended that the Tribunal erred in taking 50% disability on the basis of the evidence of PW3 i.e. doctor and Ex.A8 though he had not treated the injured and the disability certificate was not issued by the medical board. It is further contended that the Tribunal erred in taking the income of the injured at Rs.4,500/- per month in the absence of income proof of the injured and erred in awarding Rs.42,500/- towards pain and sufferings, Rs.20,000/- towards medicines, Rs.3,000/- towards transportation and Rs.10,000/- towards food and extra nourishment which is highly excessive.

11. In contra, the respondent contends that the Tribunal had rightly passed the award basing on the oral and documentary evidence on record. It is further contended that there is no error in the order of the Tribunal and requested to dismiss the appeal.

12. This Court has taken note of the submissions made by the respective parties.

13. As seen from the record, though the appellant pleaded in its counter affidavit that the accident was occurred due to the negligence on the part of the petitioner only, but in the evidence the appellant did not elicit any material disputing the extent of liability of the driver of the crime vehicle in occurrence of the accident resulting injuries to the respondent/petitioner. In view of the evidence of PW1 corroborated by Ex.A1 to A4, the Tribunal had justified in holding that the accident was occurred only due to the rash and negligent driving of the bus bearing No. AP28 Z 775 Yedulaella.

14. According to PW2 i.e. Dr.Prashanth, Orthopaedic surgeon the petitioner was admitted in Gandhi Hospital with a history of road traffic accident on 28.8.2009 with crush injury of right leg, comminuted fracture of tarsal bones and calcacium and blood injuries all over the body

and an operation was done for wound debriment with 'K' wire fixation and the said injuries are grievous in nature and that the patient was discharged on 26.09.2009 with an advise of medication, physiotherapy and complete bed rest for 4 months. He deposed that the petitioner requires removal of implants and Ex.X1 i.e. Case sheet was issued by Gandhi hospital.

15. According to PW3, Doctor Madhusudan, Orthopaedic surgeon, Area hospital is that they issued disability certificate i.e. Ex.A8 by their hospital after examining the respondent/petitioner assessing his disability at 63%. This court holds that the Tribunal on observing the petitioner in the court hall had justified in taking the disability of petitioner at 50%. As the respondent/petitioner had not filed any income proof except stating that he is a driver of auto rickshaw and was earning Rs.6,000/- per month and the Tribunal had rightly felt that it is appropriate to fix the income of the petitioner at Rs.4,500/- basing on the standard of living during the year 2009, in view of

Ramchandrappa's case this court holds that the Tribunal had rightly taken the monthly income of the injured at Rs.4,500/- per month and as the age of the respondent/petitioner at the time of accident was 28 years and relevant multiplier applicable is 17. Therefore the Tribunal had justified in holding that the injured is entitled Rs.4,59,000 $(4500 \times 17 \times 12 \times 50 / 100)$ towards loss of earnings.

16. As such, this court holds that the Tribunal had justified in awarding Rs.20,000/- towards medicines. Further justified in awarding Rs.3,000/- towards transportation of Rs.10,000/- towards food and extra nourishment. Further the Tribunal had justified in awarding compensation of Rs.20,000/- each injury and Rs.2,500 for simply injury to respondent/petitioner towards pain and suffering totally Rs.42,500/-. Therefore in total, the Tribunal had justified in awarding compensation of Rs.5,34,500/-.

17. In view of the above, this court does not see any error in the order of the tribunal. Hence appeal is liable to be dismissed.

18. Accordingly appeal is dismissed. There is no order as to costs.

Pending miscellaneous petitions, if any, in this MACMA shall stand closed.

JUSTICE PULLA KARTHIK

Date: 12.09.2022
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