

**HONOURABLE SRI JUSTICE M. GANGA RAO**

**MACMA.No.99 of 2010**

**JUDGMENT:**

The APSRTC filed the present appeal against the award dated 17-09-2009 passed in M.V.O.P.No.848 of 2004 by the Motor Accident Claims Tribunal-cum-Principal District Judge, Nellore, whereby and whereunder the Tribunal granted compensation of Rs.3,17,100/- for the injuries sustained by the petitioner in a motor accident that occurred on 22.08.2004.

For the sake of convenience, the parties will be referred as arrayed before the Tribunal.

The claimant filed claim petition stating that on 22.08.2004 at about 2.30P.M., while the petitioner and his friends were proceeding towards Kota on three motor cycles and when they reached near Utachuruvaripalem, an RTC bus bearing No.AP-10-Z-6389 being driven by its driver in a rash and negligent manner came in opposite direction to the extreme right margin of the road and dashed their motor cycles resulting in the persons going on motor cycles sustained grievous injuries and fractures. The petitioner was shifted to Government Hospital, Kota, along with other injured and as the doctor was not available, they were shifted to Dr. Raghuramaiah Hospital, Nellore and undergone treatment and later, the petitioner joined in Bolineni Hospital, Nellore and thereafter he was admitted in Vijaya Hospital, Chennai, where he undergone an operation and spent Rs.2,50,000/- for the treatment. The petitioner had to undergo another operation. The petitioner became permanently disabled and lost his earning capacity. The petitioner was a T.V. mechanic and

running a shop under the name and style of T.E. Electronics and earning Rs.200/- per day. The respondent is the owner of the offending bus and liable to pay compensation.

The respondent filed its counter denying the rashness and negligence on the part of its driver and the manner of accident as narrated by the petitioner. The respondent stated that on the alleged date of incident, when the bus reached a turning near Utchruvaripalem, the driver of the bus observed one motor cycle coming at high speed in the opposite direction and on seeing the same, he swerved the bus to the extreme left side of the road and stopped, but the motor cycle hit the bus on its right front portion and the motor cycle fell into bushes and another motor cycle came at high speed and hit the fallen motor cycle and later alter the bus and then fallen down and the crew of the bus admitted the injured in the Government Hospital, Kota. The accident took place due to the fault of the motor cyclist and there was no rashness and negligence on the part of its driver and that the claim is excessive and untenable.

Based on the above pleadings, the Tribunal framed the following issues for trial.

- 1) Whether the accident occurred out of the use of the motor vehicle bearing Regd. No.AP-10-Z-6389 of the respondent?
- 2) Whether the petitioner is entitled to compensation? If so, to what?
- 3) To what relief?

During the course of trial, on behalf of the claimant, PWs.1 to 4 were examined and Exs.A.1 to A.26 were marked. On the other

hand, RW.1 was examined and no documents were marked on behalf of the respondent.

The Tribunal, based on the evidence of PW.1 coupled with documentary evidence of Exs.A.1 and A.3, held that the accident occurred due to the rash and negligent driving of the driver of the offending bus on account of which the petitioner sustained injuries. The Tribunal, considering the evidence of PWs.2, 3, 4 coupled with documentary evidence of Exs.A.2, A.4 to A.10, 12 to 26, held that the petitioner sustained grievous injuries and also fracture of right thigh bone. Accordingly, the Tribunal granted an amount of Rs.3,17,100/- under various heads towards compensation with interest at 7.5% p.a. payable by the respondent to the petitioner from the date of petition till the date of realisation with proportionate costs. Assailing the same, the present appeal is filed.

Learned standing counsel for the appellant submits that there was no negligence on the part of the driver of the appellant Corporation as the accident took place due to the negligence of the respondent, who was driving the motor cycle in a high speed and without having any valid driving licence. The Tribunal failed to apportion at least 50% of contributory negligence on the part of the respondent, who was driving the motor cycle in a rash and negligent manner. The Tribunal erred in awarding a total sum of Rs.2,33,089/- towards medical expenses both past and future, special diet, transport and attendant charges, as the same are exorbitant and excessive.

The finding of the Tribunal that the accident was due to rash and negligent driving of the driver of the offending bus on account of which the petitioner sustained injuries became final and needs no interference in the absence of any substantial evidence on the part of the appellant Corporation, though they pleaded about the rashness and negligence on the part of the respondent and the contributory negligence on the part of the respondent, but failed to substantiate the same by adducing evidence.

Coming to the award of compensation, the Tribunal relied upon the oral evidence of PWs.2 to 4, the doctors who treated the respondent as well as the documentary evidence of Exs.A.4 to 10, A.12 to A.21, A.24 to A.26, particularly Ex.A.4-wound certificate, which shows that one of the injuries was grievous in nature and awarded compensation under various heads such as medical expenses both past and future, special diet, transport charges, loss of earnings, loss of earning power and permanent disability. On perusal of the award, this court found that while awarding compensation under various heads, the Tribunal given specific reasons for grant of the amounts under each head and in the facts and circumstances of the case, the award of such amounts are just and reasonable, as the reasons assigned by the Tribunal are well founded. Hence, the contentions of the learned standing counsel for the appellant are unsustainable and merit no consideration. Therefore, the appeal is devoid of any merit and is liable to be dismissed.

Accordingly, the appeal is dismissed. There shall be no order as to costs.

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

M. GANGA RAO, J

Date: 19-02-2019

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