

HIGH COURT OF ANDHRA PRADESH**Bench: Justice A.V. Ravindra Babu****Date of Decision: 1st May 2024****MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO. 68 OF 2020**

Parties Involved:

Appellants:

**The Depot Manager, Apsrtc, Visakhapatnam Rural Depot,
Maddilapalem, Visakhapatnam.****Managing Director, Apsrtc Bus Bhavan, Rtc Cross Roads,
Musheerabad, Hyderabad, Now At Vijayawada.****Vs****Kota Mohan Simhadri Appalaswamy,****Punnam Raju Chandra Mouli,****Legislation:**

Section 338 of the Indian Penal Code (IPC)

Subject: Appeal against the award in a motor vehicle accident case involving claims for compensation due to injuries sustained by the claimant.**Headnotes:**

Motor Vehicle Accident Compensation – The claimant, a mechanic, was injured due to the negligent driving of another mechanic without a heavy vehicle driving license – Claimant sustained multiple injuries and sought compensation of Rs. 20,00,000; awarded Rs. 3,40,000 by the Tribunal – The claim was contested on the grounds of alleged pre-existing conditions and delay in reporting the accident – Tribunal awarded based on evidence of rash and negligent act leading to injuries. [Paras 1-8]

Appeal by APSRTC – Disputed facts regarding negligence and the quantum of compensation – Appeal led to reduction in compensation from Rs. 3,40,000 to Rs. 2,15,000 based on scrutinized medical and other expenditure proofs presented – Tribunal's findings on negligence upheld; adjustments made in compensation allocations. [Paras 9-22]

Negligence Established – Confirmed by the first respondent's rash and negligent driving, supported by FIR and chargesheet – Tribunal's conclusion based on substantive evidence of claimant's injuries and related medical treatments [Para 14].

Compensation Breakdown – Final award included Rs. 50,000 for loss of earnings, Rs. 75,000 for pain and suffering, Rs. 20,000 for extra nourishment,

Rs. 20,000 for transportation, and Rs. 50,000 for permanent discomfort [Para 21].

Reduction of Compensation – Court reduced total compensation due to lack of sufficient proof for some of the claimed expenses [Paras 19-21].

Referred Cases:

None cited specifically.

Representing Advocates:

For the appellants: Sri Vinod Kumar Tarlada

For the respondents: Sri I. Sai Gopi Manoj Krishna, representing learned counsel for the first respondent/claimant

JUDGMENT:-

Challenge in this MACMA is to the award, dated 04.09.2019 in M.O.P.No.958 of 2015, on the file of the Chairman, Motor Accidents Claims Tribunal-cum-XI Additional District Judge, Visakhapatnam (“Tribunal” for short), whereunder the Tribunal dealing with a claim for compensation of Rs.20,00,000/- made by the claimant on account of injuries sustained by him in a motor vehicle accident, which was occurred on 18.01.2014, awarded a sum of Rs.3,40,000/-.

2) The parties to this MACMA will hereinafter be referred to as described before the Tribunal for the sake of convenience.

3) The case of the claimant, in brief, according to the averments set out in the claim before the Tribunal, is that the claimant is permanent resident of Adarsh Nagar, Peda Waltair. He worked as Grade-I mechanic E.No.848282 in APSRTC, Maddilapalem, Visakhapatnam Rural Depot. On 18.01.2014 at 10-45 a.m., he was attending his duty of daily maintenance of Volvo bus. After completion of the work, he was coming out of the pit. At that time, the first respondent, who is another mechanic, without having heavy vehicle driving licence drove the APSRTC Volvo bus bearing No.A.P.21-Z-2624 (hereinafter will be referred to as “offending vehicle”) in a rash and negligent manner while talking in a cell phone without noticing the claimant

coming out of the pit in reckless manner and caused the accident. Bumper of the offending bus hit the claimant and he received multiple fractures, crush injuries to the neck and nervous system. He was shifted to RTC dispensary. As per the advice of the medical officer, he was shifted to Aditya Hospital, Rajahmundry and admitted as inpatient on 21.01.2014 and discharged on 30.01.2014. He was advised to take treatment in higher medical centre. Then he was shifted to RTC Hospital, Tarnaka, Hyderabad and thereafter to NIMS, Hyderabad. He was admitted on 14.02.2014. He underwent surgery on 19.02.2014 and discharged on 24.02.2014. On receiving report from the claimant, the Station House Officer, III Town Police Station, Visakhapatnam, registered FIR in Crime No.23 of 2014 against the first respondent under Section 338 of the Indian Penal Code and after investigation filed charge sheet before the IV Additional Chief Metropolitan Magistrate, Visakhapatnam in C.C.No.370 of 2014. The accident occurred was due to the negligence of the first respondent. The claimant spent huge expenditure. He sustained disability. Hence, the claim for compensation of Rs.20,00,000/-.

4) A counter was filed on behalf of the first respondent contending in substance that he is not the driver. He is a mechanic working as claimant in second and third respondent Corporation. The claimant had previous ailment of cervical spondylitis and that he is taking treatment in APSRTC Hospital and private hospitals. Taking advantage of the previous ailment, he concocted a story as if a mishap was occurred in the garage. Hence, the petition is to be dismissed.

5) The second respondent got filed a counter and the third respondent adopted the same and the contention of the respondent Nos.2 and 3 is that there was contributory negligence on both sides. After the accident, the claimant engaged two other vehicles. The claimant was having neck pain also. He did not make complaint properly. He made complaint after three weeks of the date of accident. He was given free treatment in APSRTC as per rules. The compensation claimed is excessive. Hence, the claim is to be dismissed.

6) On the basis of the above pleadings, the tribunal settled the following issues for trail:

(1) Whether the claimant sustained injuries in motor accident occurred on 18.01.2014 due to rash and negligent act of the first respondent while driving APSRTC Volvo bus bearing No.A.P.29-Z2624?

(2) Whether the claimant is entitled for compensation? If so, to what amount and from which of the respondent?

(3) To what relief?

7) During the course of enquiry, on behalf of the claimant, P.W.1 was examined and Ex.A.1 to Ex.A.4 were marked. On behalf of the respondents, the first respondent himself examined as R.W.1, but no documents were marked.

8) The Tribunal on hearing both sides and considering the oral as well as documentary evidence held that the accident occurred was on account of rash and negligent act of the first respondent and awarded a sum of Rs.3,40,000/- as compensation. The unsuccessful respondent Nos.2 and 3 feeling aggrieved of the award, filed the present MACMA.

9) Now, in deciding the present MACMA, the point for determination is whether the award, dated 04.08.2019 in M.O.P.No.958 of 2015, on the file of the Chairman, Motor Accidents Claims Tribunalcum-XI Additional District Judge, Visakhapatnam, is sustainable under law and facts and whether there are any grounds to enhance the compensation?

POINT:-

10) Sri Vinod Kumar Tarlada, learned counsel for the appellants, would contend that there was no evidence to prove that the accident occurred was on account of rash and negligent act of the first respondent. He would further contend that the tribunal without there being any medical bills, awarded a sum of Rs.1,00,000/- towards medical expenditure and without there being any disability certificate, awarded Rs.70,000/- and further awarded a sum of Rs.1,00,000/- under the head of medicines and extra nourishment. Further the tribunal awarded a sum of Rs.1,00,000/- towards pain and suffering. The compensation awarded was in duplicity, as such, award of the tribunal needs to be interfered. 11) Sri I. Sai Gopi Manoj Krishna, learned counsel, representing learned counsel for the first respondent/claimant, though initially sought time, later he did not advance the arguments, as such, the matter is coming for orders.

12) P.W.1 before the tribunal was the injured who put forth the facts in tune with the pleadings. Through his examination Ex.A.1 to Ex.A.4 were marked.

13) R.W.1 was no other than the first respondent, who adverted to the facts in accordance with the counter.

14) As seen from the evidence of P.W.1, he denied during cross examination that there was no accident as alleged. It is to be noted that Ex.A.1 was the certified copy of FIR pertaining to the accident and police after investigation filed charge sheet under Ex.A.4. Though there was delay in lodging report by P.W.1, but Ex.A.1 reveals that as he was taking treatment in APSRTC hospital, Visakhapatnam and later he was taken to Rajhundry from there to Hyderabad, he could not lodge the report immediately. Apart from this, there was evidence of P.W.1 coupled with admission made by R.W.1 to show that he was convicted in the criminal case. There was convincing evidence adduced by the claimant to show that the accident occurred was due to rash and negligent act of the first respondent.

15) The factum of receipt of injuries by first respondent pertaining to the accident is quietly evident from Ex.A.2. According to Ex.A.2, the injury received by the claimant was grievous in nature. Though claimant did not examine any doctor to prove the nature of treatment, but according to his evidence, he was going around the hospitals. Firstly, he was admitted in APSRTC dispensary at Visakhapatnam and later he was taken to Aditya Hospital, Rajahmundry from there he was taken to RTC hospital, Tarnaka, Hyderabad and ultimately to NIMS hospital, Hyderabad. According to Ex.A.1 report, the claimant sustained injuries to his disc and there was compression of nervous in the neck.

16) As seen from Ex.A.2, the medical officer could not mention the plight of the claimant fully on the ground that the claimant was to be taken to a specialist hospital. Ultimately, the finding of facts recorded by the tribunal is that the claimant received grievous injury.

17) Now turning to the heads of compensation, the tribunal took note of the fact that from the date of accident i.e., 18.01.2014 till 24.02.2014 the claimant lost his earnings. It is to be noted that though the claimant was working as RTC employee, but his absence period was to be regularized by

applying appropriate leave. The leave that might have been incurred by the claimant is to be compensated in terms of money, as such, the tribunal rightly awarded a sum of Rs.50,000/- for the loss of earnings considering his monthly salary as Rs.33,413/-. The other heads of compensation is that the tribunal awarded a sum of Rs.1,00,000/- towards pain and suffering, Rs.1,00,000/- towards medicines and extra nourishment, Rs.20,000/- towards transportation charges and Rs.70,000/- towards permanent disability.

18) It is to be noted that the claimant did not file any discharge summary. No piece of paper is filed to explain the nature of surgeries, but there is some clue from Ex.A.1, copy of report as well as from Ex.A.2 wound certificate the nature of the injuries which needs absolutely surgical intervention. Considering the period of treatment and the surgical intervention which the claimant had to undergo, this Court is of the considered view that it is reasonable to consider a sum of Rs.75,000/- towards pain and suffering. In the considered view of this Court, the tribunal awarded a sum of Rs.1,00,000/- under this head which is higher side and hence it cannot be considered.

19) Turning to the medicines, no piece of paper is filed by the claimant. Contention of the insurance company is that the claimant took treatment under APSRTC in the department hospitals. Without there being any basis whatsoever, the tribunal awarded a sum of Rs.1,00,000/- under the guise of medicines and extra nourishment. It is altogether different that the claimant can claim certain amount towards extra nourishment for which there is no need to file any proof because the extra nourishment meant a person has to take special diet so as to get speeding up of the recovery. Hence, an amount of Rs.1,00,000/- granted by the tribunal without there being any basis is disallowed and it is safe to award a sum of Rs.20,000/- towards extra nourishment considering the plight of the claimant. Further the tribunal awarded a sum of Rs.20,000/- towards transport expenses which is reasonable because the claimant was moving around the hospitals at Visakhapatnam, Rajahmundry and Hyderabad for several times.

20) Turning to so-called permanent disability, absolutely, the claimant did not prove any disability. However, the fact remained is that according to Ex.A.2, the claimant received fracture to the neck, compression of nervous and injury to the disc. It is to be noted that admittedly, the claimant will have some discomfort throughout his life. The said discomfort is not

coming in the way of earnings. Hence, it is reasonable to award a lump sum amount of Rs.50,000/- towards permanent discomfort.

21) In the light of the above, the reasonable compensation which the claimant is entitled can be summarised as follows:

(a) Loss of earnings	:	Rs.
		50,000-00
(b) Pain and suffering	:	Rs.
		75,000-00
(c) Extra nourishment	:	Rs.
		20,000-00
(d) Transportation charges	:	Rs.
		20,000-00
(e) Permanent discomfort	:	Rs.
		50,000-00

22) Therefore, the claimant is entitled total compensation of Rs.2,15,000/-.

23) In the result, MACMA is allowed in part with proportionate costs reducing the compensation from that of Rs.3,40,000/- to Rs.2,15,000/- with interest at 7.5% per annum from the date of petition till the date of deposit and rest of the compensation shall be deposited by the respondent Nos.2 and 3 within a period of one month from this day.

Consequently, miscellaneous applications pending, if any, shall stand closed.

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