
(2014) 06 AP CK 0095

In the Andhra Pradesh High Court

Case No : M.A.C.M.A. No. 373 OF 2009

A.P. State Road Transport Corporation

APPELLANT

Vs

M. Narsing Rao

RESPONDENT

Date of Decision : 20-06-2014

Acts Referred:

Citation : (2014) 06 AP CK 0095

Hon'ble Judges : U. Durga Prasad Rao, J

Bench : Single Bench

Advocate : K. Madhava Reddy, Advocate for the Appellant; S. Ramesh Gupta, Advocate for the Respondent

Judgement

U. Durga Prasad Rao, J.—This MACMA is directed at the instance of APSRTC against the Award dated 23.01.2008 in O.P. No. 1046 of 2006 passed by the Chairman, MACT-cum-II Additional District Judge, Ranga Reddy District (for short "the Tribunal).

2. The factual matrix of the case is thus:

"a) The petitioner--M. Narsing Rao having fell down while getting down from APSRTC bus bearing No. AP 9Z 7387 at about 3 PM on 24.06.2006 at Kabirnagar bus stop when the driver of the bus moved the bus in a rash and negligent manner, got injured to his right leg which was subsequently amputated below knee in NIMS Hospital. He moved claim petition--O.P. No. 1046 of 2006 against APSRTC. The Tribunal on consideration of facts and evidence has awarded Rs. 6,81,238/- with proportionate costs and interest @ 7.5% from the date of OP till the date of realization under heads as below:

Having been aggrieved by the award APSRTC preferred the instant appeal.

3. Heard arguments of Sri Kambham Madhava Reddy, learned counsel for appellant/APSRTC and Sri S. Ramesh Gupta, learned counsel for respondent/claimant.

4. a) Impugning the award learned counsel for appellant firstly argued that the Tribunal erred in holding that bus driver was responsible for the accident. PW2, the alleged independent eye-witness admitted his ignorance about his own sworn affidavit contents which would show that he was set up to bolster P.W. 1. Learned counsel argued that accident in fact was occurred due to whole and sole fault of claimant as he recklessly tried to alight the moving bus unmindful of the consequences. Hence the Tribunal ought to have dismissed the claim.

b) Secondly, questioning the quantum of compensation learned counsel vehemently argued that the Tribunal grossly erred in granting compensation of Rs. 6,41,238/- under the head loss of income due to 50% disability in spite of the fact that the claimant continued in the same job and gets same salary and no evidence was adduced to show either he was terminated from his service or shifted to less salaried section. He further argued that the Tribunal committed another error in selecting 13 as multiplier. Bhagwandas Vs. Mohd. Arif, it ought to have taken 10 as multiplier for computation of compensation if it is convinced that he is entitled to compensation for the alleged loss of income. He thus prayed to allow the appeal and exonerate APSRTC from its liability or alternatively reduce the compensation suitably.

5. Per contra, while supporting the judgment learned counsel for respondent/claimant argued that claimant is entitled to more compensation than awarded by the Tribunal inasmuch as Tribunal while computing compensation for loss of earnings has taken only gross salary of the claimant into consideration without considering future prospects He argued that if future prospects as observed in Smt. Sarla Verma and Others Vs. Delhi Transport Corporation and Another, and Santosh Devi Vs. National Insurance Company Ltd. and Others, were taken into consideration, the compensation would have been much more than what was awarded. He thus prayed to dismiss the appeal and enhance the compensation.

6. In the light of above rival arguments, the point for determination is:

"Whether the compensation awarded by the Tribunal is just and reasonable or needs enhancement? "

7. Point: The accident, involvement of APSRTC bus bearing No. AP 9Z 7387, injuries to the claimant and consequent permanent disability are not much disputed in this appeal.

a) The first argument of APSRTC was that claimant himself was responsible for the accident. This argument cannot be accepted because P.W. 1--victim and PW2--independent witness have clearly deposed that when the petitioner was stepping down from the bus, the driver moved the bus in a rash and negligent manner and thereby the petitioner fell down and received injuries. PW2 who works a tea maker in Pooja Tiffin Centre situated at Kabirnagar X roads has asserted in his evidence that crime bus came and stopped in front of their hotel at about 3.15 PM on 24.06.2006 and when P.W. 1 was stepping down from the bus the driver drove the bus in a rash and negligent manner and thereby P.W. 1

fell down and he stood in front of his hotel and watched the incident. Of course, in the cross-examination he admitted that he does not know the contents of affidavit as he is an illiterate and the affidavit contents are in English. The aforesaid candid admission of PW2 does not mitigate his veracity. He was shown in the charge sheet as eyewitness to the incident. Therefore, his evidence can be accepted. Thus, the evidence of P.Ws. 1 and 2 clearly demonstrate the guilt of the bus driver. To contradict the same, APSRTC has not chosen to examine either the bus driver or bus passengers to prove the innocence of the driver if any. Considering all these aspects the Tribunal rightly fixed the liability on the bus driver. So, the argument of the appellant/APSRTC in this regard, cannot be accepted.

b) The next argument of appellant is with regard to quantum of compensation. It is true that there is no clarification in the evidence of P.W. 1 that he was terminated from service due to disability. No doubt, he stated that due to amputation of his right leg he was totally disabled to his job and also his regular domestic duties but there is no clinching proof that he was terminated from service. He neither examined any authority from his office nor produced termination order. On the other hand, in the cross-examination he stated that he is still having 13 years of service. Therefore, it is clear that he is still continued in service with same salary. Hence, the point is, a person who suffered permanent disability in a motor vehicle accident and continued in the same job and gets the same salary whether entitled to compensation for loss of future income. The observation of Honourable Apex Court in the case of Raj Kumar Vs. Ajay Kumar and Another, is pertinent in the present context and hence extracted thus:

"In fact, there may not be any need to award any compensation under the head of "loss of future earnings", if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. "

c) So, when the above principle is applied to the case on hand, since the claimant is continued in the same service and as there is no proof of reduction in salary, he does not deserve compensation for loss of future earning power since there is no loss of income in real terms. To this extent the Tribunal's finding cannot be countenanced. However, I must hasten and say, that is not the end of the matter.

d) A person who suffered permanent disability in a motor vehicle accident is entitled to compensation both for his permanent disability as well as for loss of his earning power due to the said disability. On this aspect Honourable Apex

Court in S. Manickam Vs. Metropolitan Transport Corporation Ltd., considering several decisions has held as follows:

"It is true that the compensation for loss of earning power/capacity has to be determined based on various aspects including permanent injury/disability. At the same time, it cannot be construed that compensation cannot be granted for permanent disability of any nature. For example, take the case of a non-earning member of a family who has been injured in an accident and sustained permanent disability due to amputation of leg or hand, it cannot be construed that no amount needs to be granted for permanent disability. It cannot be disputed that apart from the fact that the permanent disability affects the earning capacity of the person concerned, undoubtedly, one has to forego other personal comforts and even for normal avocation they have to depend on others."

e) Thus, it is clear that the victim is entitled to compensation both for permanent disability (i.e. loss of amenities due to disability) and loss of earning power due to disability. In the instant case, normally the claimant is entitled to both types of compensations. However, since he is continued in the same job and getting the same salary he is not entitled to compensation for loss of future income due to disability as there is no present loss of earnings. Therefore, he deserves compensation only for physical disability (i.e. loss of amenities due to disability).

f) In the above context, a perusal of the award would show that the Tribunal no doubt awarded Rs. 25,000/- for loss of amenities. In my considered view, compensation for loss of amenities awarded by the Tribunal is quite unjust and illogical and the Tribunal has not considered in proper perspective, what valuable and precious amenities the claimant has lost. In amputation of his right leg, the claimant has lost not just his basic amenities of attending day-to-day pursuits like an ordinary man do, but his grief is, he lost dancing opportunity for life. In para-4 of his claim petition the petitioner claimed himself as a famous dancer both in classical and folk forms and that he participated in a number of programmes sponsored by Ministry of Human Resources Development, Government of India and gave programmes at various places of India especially in Delhi and abroad and achieved laurels. He mentioned that due to loss of his right leg all his opportunities to perform dance programmes on stage came to an end. In his evidence also he reiterated the same facts. He produced Ex. A9--bunch of certificates he secured through dance performances. They are:

"1) The certificate dated 26.10.1987 issued by Ministry of Human Resource Development, Government of India showing claimant participated in the Youth Programmes of Festival of India in USSR from 01.09.1987 to 17.09.1987.

2) The certificate issued by Ministry, Cultural Affairs, State of A.P. showing claimant participated in folk form dance (Bonalu) held on the eve of A.P. Formation Day i.e. 01.11.1988.

3) The certificate issued by Chief Minister of Maharashtra and President of Apna Utsav Committee to the claimant showing that he participated as group leader of

Lambada dance representing the South Zone Cultural Centre in Apna Utsav festival in Maharashtra from 07.01.1989 to 02.02.1989.

4) The certificates dated 24.01.1989 and 13.03.1991 issued by the Director, South Zone Cultural Centre, Thanjavur to the claimant showing that he represented as group leader of Lambada dance.

5) The certificate issued by Director, Eastern Zonal Cultural Centre, Calcutta to the claimant for his participation in Kanchenjunga Festival, 1995.

6) The certificate issued by Secretary to the Government of India, Department of Culture to the claimant for his participation in Folk Dance Festival and Crafts Fair organised on the occasion of Republic Day, 1997 at New Delhi."

8. The above certificates amply manifest his dancing prowess. It is need less to emphasise that nimble and dexterous movement of the feet of a versatile dancer give immense pleasure to commoner and connoisseur alike. Fate with its crucial sword pruned not only his leg but also the very art of the claimant and no amount of compensation can substitute his misery. Unfortunately, the Tribunal while assessing the compensation for loss of amenities, has lost sight of this aspect and granted only a pittance. In the result, the Tribunal committed an error of granting what it ought not to and failed to grant what it ought to. This can be undone by shifting the sum of Rs. 6,41,238/- from loss of earning power to loss of amenities. It is thus directed that total compensation for loss of amenities shall be treated as Rs. 6,66,238/- (Rs. 6,41,238/- + Rs. 25,000/-). The appellant further argued as if the Tribunal ought to have selected 10 instead of 13 as multiplier. I am unable to accept this argument because in Sarla Verma's case (supra) Honourable Apex Court fixed 13 as multiplier for the persons in the age group of 46--50 and the petitioner was aged 46 years by the date of accident. It may be noted on behalf of claimant it is argued that he deserves more compensation for loss of earning power than what was awarded by the Tribunal, but in view of foregoing discussion he does not deserve compensation for loss of earning power as there is no such present loss.

9. In the result, MACMA filed by appellant/APSRTC is dismissed. No order as to costs in the appeal.

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