

(2014) 06 AP CK 0086

In the Andhra Pradesh High Court

Case No : M.A.C.M.A. Nos. 2567 of 2009 and 730 of 2010

E. Prabhakar

APPELLANT

Vs

The Managing Director
 The Managing Director Vs E.
Prabhakar

RESPONDENT

Date of Decision : 18-06-2014

Acts Referred:

Citation : (2014) 06 AP CK 0086

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

Bench : Single Bench

Advocate : M.M. Ali and K. Madhava Reddy, Advocate for the Appellant; M.M. Ali and K. Madhava Reddy, Advocate for the Respondent

Judgement

U. Durga Prasad Rao, J.—Aggrieved by the Award dated 12.06.2008 in O.P. No. 1977 of 2006 passed by the Chairman, MACT-cum-Chief Judge, City Civil Courts, Hyderabad (for short "the Tribunal") both the claimant and APSRTC preferred M.A.C.M.A. Nos. 2567 of 2010 and 730 of 2010 respectively.

Since both the appeals arise out of same award, they are disposed of by this common judgment. The parties in both the appeals are referred as they stood before the Tribunal.

2. The factual matrix of the case is thus:

a) On 12.03.2004, the claimant boarded the APSRTC Luxury bus bearing No. AP 10 Z 4477 at Medak to go to Hyderabad and when the said bus reached Gunfoundry, Hyderabad at about 4:15 p.m., while the claimant was still alighting from the bus, the driver of the bus suddenly raised the speed of the bus, thereby the claimant fell down on the road and the rear wheels of the bus ran over both the legs of the claimant. The claimant sustained grievous injuries on his right foot and left leg and suffered 40% partial and permanent disability. It is averred that the accident was occurred due to the rash and negligent driving by the driver of the offending bus. On these pleas, the claimant filed O.P. No. 1977 of

2006 against the respondents/APSRTC and claimed Rs. 8,45,484/- as compensation under different heads mentioned in the O.P.

b) Respondents 1 and 2/APSRTC filed counter and denied all the material averments made in the claim petition and urged to put the claimant in strict proof of the same. Respondents 1 and 2 further denied the age, avocation and income of the claimant. Finally, they contended that the compensation claimed is highly excessive and exorbitant and prayed to dismiss the O.P.

c) During trial, P.Ws. 1 to 3 were examined and Exs. A1 to A17 were marked on behalf of claimant. R.W. 1 was examined and no documents were marked on behalf of respondents.

d) A perusal of the award would show that the Tribunal having regard to the oral evidence of P.Ws. 1 and 2 coupled with Ex. A1-FIR and Ex. A3-Charge sheet, has held that the APSRTC bus driver was responsible for the accident. So far as quantum of compensation is concerned, the Tribunal awarded total compensation of Rs. 3,04,000/- with proportionate costs and interest at 6% p.a. under different heads as follows:

Hence the appeals by the claimant on the ground of inadequacy of compensation and APSRTC on the ground of its exorbitance.

3. Heard arguments of Sri M.M. Ali, learned counsel for appellant/claimant in M.A.C.M.A. No. 2567 of 2009 and for respondent in M.A.C.M.A. No. 730 of 2010, Sri K. Madhava Reddy, learned counsel for respondents/APSRTC in M.A.C.M.A. No. 2567 of 2009 and for appellants in M.A.C.M.A. No. 730 of 2010.

4. Challenging the award, learned counsel for appellant/claimant in M.A.C.M.A. No. 2567 of 2009 argued that the Tribunal while computing loss of future income erred in fixing his notional income at Rs. 300/- p.m. inspite of the fact that his present salary is Rs. 6,000/- p.m. Learned counsel argued that the Tribunal ought to have taken the said income i.e., Rs. 6,000/- p.m. for computation and ought to have calculated the compensation accordingly. He further submitted that Second Schedule of the Motor Vehicles Act, has to be followed for such computation. He relied upon the decision reported in Abati Bezbaruah Vs. Dy. Director General Geological Survey of India and Another, . He thus prayed to allow his appeal and enhance the compensation.

5. a) Per contra, learned counsel for appellant/APSRTC in M.A.C.M.A. No. 730 of 2010 while impugning the award firstly argued that the Tribunal committed grave error in fixing fault on the driver of APSRTC instead of the claimant. Learned counsel argued that the bus in question was plied from Medak to Hyderabad and there was no regular stop or request stop at Gunfoundry but the claimant in his anxiety tried to alight from the moving bus without informing the driver and seeing him suddenly alighting the bus, the driver who was going at slow speed due to heavy traffic in the Abids road tried to stop the bus and in that process, the claimant fell down and got injured. In the entire episode there was no fault of

the bus driver and he clearly deposed this fact in his evidence, still the Tribunal held as if the bus driver alone was responsible. Learned counsel argued that the Tribunal atleast ought to have held the claimant contributed for the accident and fixed some percentage of liability on him though not totally.

b) Secondly, impugning the quantum of compensation, learned counsel argued that the Tribunal at one hand held that there was no loss of salary or promotional opportunity for the petitioner due to the disability suffered by him in the accident but on the other hand granted compensation for loss of future earnings on the assumption that if after retirement he is engaged in a gainful employment, his loss of earnings per month will be Rs. 300/- and accordingly granted compensation of Rs. 54,000/-. Learned counsel argued that awarding compensation for loss of future income on this assumption is quite untenable. He submitted that compensation will be generally awarded only on the "present loss of earning" due to disability but not on "future assumed loss of earning power" after retirement, because the earnings after retirement is a future uncertain event on which no compensation can be awarded on conjecture.

He thus prayed to allow the appeal and exonerate the APSRTC or alternatively reduce the compensation suitably.

6. In the light of above rival arguments, the points for determination in these appeals are:

- 1) Whether the Tribunal was right in fixing liability on the APSRTC bus driver?
- 2) Whether the Tribunal was right in awarding compensation for future assumed loss of earning power due to disability though there is no present loss?

3) To what relief?

7. a) POINT No. 1: The first and foremost contention of APSRTC is that fault in the accident lies with the claimant himself, as he tried to hurriedly alight from the running bus and thereby fell down and suffered injuries. It is contended that there is no regular stop or request stop at Gunfoundry, Hyderabad. Regarding manner of occurrence of accident we have the evidence of P.Ws. 1 and 2 for claimants and R.W. 1 on behalf of APSRTC.

b) P.W. 1--claimant deposed that the bus which was coming from Medak to Hyderabad reached Gunfoundry, Hyderabad at 4.45 PM and bus driver stopped at Gunfoundry and allowed him to get down and while he was getting down, the driver suddenly raised the speed of the bus without waiting for P.W. 1 to disembark completely from the bus and thereby he fell down on the road and the rear wheels of the bus ran over him. Thus, P.W. 1 asserted that fault lies with the bus driver. In the cross-examination he stated that there is a bus stop near Gunfoundry and he requested the driver to stop the bus and while he was getting down from the bus the driver suddenly moved the bus and thereby he fell down from the bus. He denied the suggestion that accident was occurred due to his negligence but not the bus driver. The above is the evidence of P.W. 1 touching

the accident. It is interesting to note that though it is emphatic case of the APSRTC that there was neither a regular stop nor a request stop at Gunfoundry the place of accident, such a crucial plea was not taken in the counter except denying the petitioner's case as false and taking a further plea that driver was not responsible for the accident, APSRTC has not put forth its own version of manner of occurrence of accident clearly in its counter. That apart in the cross-examination of P.W. 1 also it was not specifically suggested to him that there was no regular or request stop at Gunfoundry and P.W. 1 tried to alight without intimating to the bus driver. Therefore, the contention of RTC in this regard cannot be accepted. A perusal of evidence of P.W. 1 would show that it was unshaken during the cross-examination. Hence, the same is reliable. The evidence of P.W. 1 gets corroboration from P.W. 2 an independent eyewitness and a traveler in the same bus.

c) P.W. 2--Syed Israruddin deposed that on that day he travelled in the bus to Hyderabad on his personal work and the claimant also travelled in the same bus and at about 4.45 PM the bus stopped at Gunfoundry and claimant get down from the bus but the driver moved the bus in a rash and negligent manner before the claimant fully get down from the bus, that is why the rear wheels of the bus ran over both the legs of the claimant causing crush injuries. He further deposed that he accompanied the claimant, driver and conductor to the Osmania General Hospital and he was examined by the police and his statement was recorded. In the cross-examination he stated that he started at Medak to go to Hyderabad. He knows P.W. 1. He further stated that when P.W. 1 was getting down from the bus the driver of the bus suddenly moved and thereby P.W. 1 fell down on the road and both of his legs came under the rear wheel of the bus. He denied the suggestion that he was not present at the time of accident. He asserted that he along with the help of staff of SBH shifted P.W. 1 to Osmania General Hospital for treatment. Thus, as can be seen the evidence of P.W. 2 lends corroboration to the version of P.W. 1.

It may be noted that P.W. 2 was also not suggested that there was no regular or request stop at Gunfoundry to enable P.W. 1 to alight the bus that he himself tried to alight the bus without informing the bus driver. Therefore, it is clear that nothing useful could be elicited in the cross-examination to impeach the credibility of evidence of P.W. 2. A perusal of Ex. A3--charge sheet would show that P.W. 2 was mentioned as eye-witness in it. Therefore, his evidence can be believed.

d) As against the evidence of P.Ws. 1 and 2, R.W. 1--the bus driver deposed that when the bus reached Gunfoundry at about 4.45 PM, P.W. 1 tried to get down from the running bus without intimating to him and consequently lost balance and fell down on the road and thereby the left rear tyre of the bus crushed two legs of the claimant. He deposed that accident was occurred due to the fault of P.W. 1. In the cross-examination he stated that there was no bus stop at Gunfoundry and he did not stop the bus at the time of accident and he was

driving the bus slowly going through heavy traffic. He further stated that there was no request stop at Gunfoundry. He denied the suggestion that busses will be stopped at Gunfoundry at the request of passengers.

It may be noted that as already stated supra, it was for the first time in the evidence of R.W. 1 a plea was taken that there was no regular or request stop at Gunfoundry. Such a plea was not taken in the counter and not posed to P.Ws. 1 and 2. Therefore, interested evidence of R.W. 1 cannot be accepted in preference to the evidence of P.Ws. 1 and 2 and more particularly in preference to disinterested evidence of P.W. 2. Thus, on an analysis of entire evidence on record it can be safely concluded that the accident was occurred due to the fault of bus driver only. The police too after investigation found fault with him and laid charge sheet against him. Therefore, on considering the oral and documentary evidence on record the contention of appellant/RTC is negatived. This point is answered accordingly.

8. a) POINT No. 2: This point is concerned, the contention of learned counsel for APSRTC is that the Tribunal having held that claimant has not suffered any loss of salary or promotional chances due to his present disability, still surprisingly awarded compensation of Rs. 54,000/- on the premise, if after retirement he is engaged in any employment, his earnings will be reduced by 40%, due to 40% disability suffered by him now. It is vehemently contended that awarding compensation on such assumption is totally unwarranted since compensation for disability will be generally awarded only for the present loss of earnings but not the assumed loss of earnings after retirement because earnings after retirement is a future uncertain event on which no compensation can be awarded.

9. On the other hand, the contention of claimant is that the Tribunal ought to have computed compensation under this head by taking salary at Rs. 6,000/- p.m. in which case he will be entitled to more compensation.

10. In view of above arguments, the first aspect for consideration is whether the permanently disabled person is entitled to compensation both for his disability as well as loss of 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."

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, the Tribunal has granted Rs. 12,516/- for loss of amenities due to his permanent disability and there is no dispute about it. Then coming to compensation for loss of earning power due to disability the Tribunal in Para-15 of its award has observed that there is no cogent evidence that either the salary of the claimant was reduced or his promotion was denied due to his present disability. After expressing the said opinion the Tribunal held-that P.W. 1 may not be able to do any job after retirement due to his disability and therefore his future loss of earnings notionally would be Rs. 300/- per month. On this premise, it selected multiplier 15 and by multiplying the annual loss of earnings, it arrived the future loss of earnings at Rs. 54,000/- (Rs. 3,600 x 15) and awarded the said amount which is now in dispute. Hence, the question is, when in the opinion of Tribunal there is no present loss of earnings due to disability, whether it can award compensation for future assumed loss of earnings after retirement.

11. In this context, it is apt to refer the observation of the Honourable Apex Court in the decision reported in Raj Kumar Vs. Ajay Kumar and Another, . While dealing with assessment of compensation for permanent disability it observed 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."

So from the above observation it is clear that when a victim who suffered permanent disability in a motor vehicle accident is being continued in service and gets same salary, there will not be any need to award compensation for future loss of earnings except compensation under the head loss of amenities.

12. In the light of above observation, the compensation awarded by the Tribunal on the assumed loss of earnings after retirement of the claimant cannot be countenanced. As rightly argued by APSRTC such an award is based on future uncertain event. Therefore, the compensation of Rs. 54,000/- awarded under this head has to be deleted. Consequently the argument of claimant that he is entitled to more compensation under this head cannot be accepted. This point is answered accordingly.

In view of the above discussion, the claimant is entitled to only Rs. 2,50,000/-

(Rs. 3,04,000/- minus Rs. 54,000/-).

13. In the result, both the appeals are ordered as follows:

- i) M.A.C.M.A. No. 2567 of 2009 filed by claimant is dismissed.
- ii) M.A.C.M.A. No. 730 of 2010 filed by APSRTC is partly allowed and compensation is reduced to Rs. 2,50,000/-.
- iii) The APSRTC shall deposit the said compensation amount with proportionate costs and interest @ 7.5% per annum from the date of OP till the date of realization within one month from the date of this judgment, failing which execution can be taken out against it.
- iv) No order as to costs in these appeals.

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