

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

M.A.C.M.A.No.2415 OF 2013

Between:

The A.P.S.R.T.C.,
Rep. by its Managing Director,
Musheerabad, Hyderabad.

.... APPELLANT

Versus

Kasunuru Moshe, S/o.Daveedu,
Muslim, Aged 40 years,
Coolie, R/o.S.C.Colony,
Chapadu Village and Mandal,
Kadapa District.

....RESPONDENT

DATE OF COMMON JUDGMENT PRONOUNCED: 26.12.2023

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

1. Whether Reporters of Local Newspapers
may be allowed to see the Judgment? Yes/No
2. Whether the copy of Judgment may be
marked to Law Reporters/Journals? Yes/No
3. Whether His Lordship wish to see the
fair copy of the Judgment? Yes/No

B.V.L.N.CHAKRAVARTHI, J

*** HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

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! Counsel for the Appellant : Sri K.Viswanatham

^ Counsel for the Respondent : Sri Narasimha Rao Gudiseva

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> Head Note:

? Cases referred:

- 1. 2020 (9) SCC 805**
- 2. 2023 SCC Online SC 780**
- 3. 2009 ACJ 1298**
- 4. 2019 ACJ 1849 (SC)**

This Court made the following:

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

M.A.C.M.A.No.2471 OF 2013

Between:

Kasunuru Moshe, S/o.Daveedu,
Muslim, Aged 44 years,
Coolie, R/o.S.C.Colony,
Chapadu Village and Mandal,
Kadapa District.

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B.V.L.N.CHAKRAVARTHI, J

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....RESPONDENT

! Counsel for the Appellant : Sri Narasimha Rao Gudiseva

^ Counsel for the Respondent : Sri K.Viswanatham

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- 3. 2009 ACJ 1298**
- 4. 2019 ACJ 1849 (SC)**

This Court made the following:

HON'BLE SRI JUSTICE B.V.L.N. CHAKRAVARTHI

M.A.C.M.A.No.2415 OF 2013 & 2471 OF 2013

COMMON JUDGMENT:

The appeal in MACMA No.2415/2013 is preferred by the appellant/APSRTC challenging the award dated 11.06.2012 passed in M.V.O.P.No.328/2009 on the file of Motor Accidents Claims Tribunal-cum-II Addl.District Judge, Prodduturu, Kadapa District, whereunder the learned Tribunal partly allowed the petition, awarded compensation of Rs.5,53,018/- with interest @ 7.5% p.a. from the date of petition, till the date of deposit, for the injuries sustained by the claimant in a motor vehicle accident that occurred on 03.10.2008.

2. The appeal in MACMA No.2471/2013 is preferred by the appellant/claimant, challenging the above award seeking enhancement of compensation.

3. For the sake of convenience, the parties are arrayed as parties before the learned Tribunal.

4. As seen from the record, the claim petition was filed U/s.166 of the Motor Vehicles Act, 1988 (for brevity "the Act") claiming compensation of Rs.7,50,000/- for the injuries sustained by the claimant in motor vehicle accident occurred on 03.10.2008.

5. The case of the claimant is that on 03.10.2008 at about 06.00 p.m. the claimant was proceeding on a TVS XL Moped bearing No.AP 04 6082 from Prodduturu to Chapadu; one Papa Sab was riding the motor cycle; the claimant was the pillion rider; when the motor cycle reached a place near agricultural marketing check post, bus bearing No.AP 28Z 1150 belonging to the respondent/APSRTC came from opposite side in a rash and negligent manner, dashed the motor cycle; the claimant and the rider of the motor cycle fell down; the claimant sustained injury to right leg; the claimant was shifted to the Government Hospital, Proddutur; he was referred to Government General Hospital, Kurnool; later he was shifted to Mythri Super Speciality Hospital, Hyderabad; he was treated till 25.11.2008; the claimant underwent operation, plates were inserted and skin grafting was done; the claimant also took treatment at NIMS Hospital, Hyderabad; he incurred Rs.3,00,000/- towards medical treatment; Rs.10,000/- towards transport charges and Rs.10,000/- towards attendant charges; the claimant suffered dis-figuration of the right lower leg, and as a result, he sustained permanent disability; prior to accident he was doing coolie work; now he is unable to attend coolie work; hence, filed petition U/s.166 of Motor Vehicles Act, 1988 claiming compensation of Rs.7,50,000/-.

6. Before the learned Tribunal, the respondent/APSRTC filed counter, while traversing the material averments with regard to proof of age, avocation, monthly earnings of the injured, manner of accident, rash and negligence on the part of the driver of the offending vehicle, liability to pay compensation; contended that the accident was occurred due to negligence of driver of the motor cycle; the driver of APSRTC bus shifted the injured persons to the Government Hospital; police registered a case against the bus driver due to influence of the claimant; there was no negligence on the part of the driver of the APSRTC bus.

7. On the strength of the pleadings of both parties, the learned Tribunal framed the following issues:

1. Whether the petitioner was injured in a motor vehicle accident on 03.10.2008 due to rash and negligent driving of the APSRTC Bus bearing No.AP 28Z 1150 by its driver?

2. Whether the petitioner is entitled to the compensation as prayed for?

3. To what relief?

8. To substantiate his claim, the claimant examined himself as P.W-1 and placed Exs.A-1 to A-12. No oral or documentary evidence was adduced on behalf of the respondent/APSRTC.

9. The learned Tribunal, basing on the evidence of the claimant and Exs.A-1 to A-12 which includes FIR (Ex.A-1) and police report (charge sheet) (Ex.A-3), held that the accident was occurred due to rash and negligence of the driver of the APSRTC Bus bearing No.AP 28Z 1150.

10. The learned Tribunal considering the evidence of petitioner and documents placed by him, assessed the compensation for personal injuries at Rs.5,53,018/-, and awarded interest @ 7.5% per annum, from the date of petition, till the date of deposit.

11. The learned counsel for the appellant/claimant would submit that the learned Tribunal did not consider the permanent disability suffered by the claimant as 65% as per certificate issued by the Medical Board, and that on account of physical disability, he is unable to do any coolie work, as done earlier, and therefore, failed to award just compensation towards loss of future earnings on account of permanent disability. He would further submit that the learned Tribunal erroneously deducted 1/3rd of the income towards personal expenses, though it is a case of compensation for personal injuries U/s.166 of M.V.Act, 1988.

12. The learned Standing Counsel for APSRTC would submit that the learned Tribunal failed to appreciate the evidence in proper perspective and came to an erroneous opinion that the accident was occurred due to rash and negligence of the driver of the APSRTC Bus, though the accident was occurred due to rash and negligence of the driver of the TVS XL Moped. He would further submit that there are no grounds interfere with the compensation awarded by the learned Tribunal.

13. In the light of the above contentions raised in both the appeals, the points that would arise for consideration in both the appeals are as under:

1. Whether the award and decree passed by the learned Tribunal warrants interference of this Court?

2. To what relief?

14. **POINT No.1:**

It is the case of the claimant that he was travelling on the motor cycle on 03.10.2008 as pillion rider, the offending vehicle i.e., APSRTC Bus bearing No.AP 28Z 1150 came in opposite direction in a rash and negligent manner and dashed the motor cycle, and as a result, the accident was occurred. The contention of the APSRTC is that the

accident was occurred due to rash and negligent driving of the driver of the motor cycle. The claimant to probable his case, examined himself as P.W-1 and re-iterated his case on oath before the learned Tribunal. Nothing was elicited in the cross-examination to dis-prove the version deposed by P.W-1 or to probable the version of the APSRTC. The version of P.W-1 was corroborated by Ex.A-3 police report (charge sheet), the police opined that the accident was occurred due to rash and negligent driving of the deceased. It is an admitted fact that the APSRTC did not examine its driver to contradict the version of P.W-1, and the opinion of the police found in Ex.A-3. In the light of said circumstances, this Court is of the opinion that there are no grounds to interfere with the finding of the learned Tribunal that the accident was occurred due to rash and negligent driving of the APSRTC bus No.AP 11Z 1150.

15. The learned Tribunal considered the evidence of P.W-1 and Ex.A-4 photograph of the injured/claimant, Ex.A-5 out-patient book issued by the Government Hospital, Ex.A-6 receipts issued by the Prime Hospital, Hyderabad, Ex.A-7 medical bills, Ex.A-11 final settlement bill dated 27.02.2009 awarded Rs.3,10,218/- towards expenditure relating to medicines, hospitalisation and medicines.

16. The learned Tribunal also awarded a sum of Rs.10,000/- towards transport charges, Rs.10,000/- towards attendant charges, basing on the testimony of P.W-1. The learned Tribunal considering the nature of injuries suffered by the claimant, awarded Rs.20,000/- towards pain and suffering.

17. When coming to compensation for loss of earnings, which the injured would have made, had he not been injured, the learned Tribunal considering the evidence of P.W-1 and Ex.A-9 physical disability certificate issued by the District Medical Board, assessed the physical disability as 65%. The learned Tribunal fixed the income of the claimant at Rs.100/- per day notionally. Thus, the monthly income was fixed at $\text{Rs.100} \times 30 = \text{Rs.3,000/-}$. The learned Tribunal deduced $\frac{1}{3}$ rd of the income towards personal expenses and arrived the monthly income at $\text{Rs.3,000} - 1,000 = \text{Rs.2,000/-}$ per month; and the annual income at $\text{Rs.2,000} \times 12 = \text{Rs.24,000/-}$ and accordingly assessed the compensation towards loss of future earnings on account of permanent disability.

18. The learned counsel for the appellant submitted that the deduction of $\frac{1}{3}$ rd of income of injured towards personal expenses is not justified as per law.

19. The Hon'ble Apex Court in **Lalan D. Alias Lal and another Vs. Oriental Insurance Company Limited**¹, at para No.14 held as under:

“As the appellant has survived though at present in almost “coma stage” as observed by the High Court, we reject the Insurance Company’s plea for making any deduction towards personal living expenses.”

20. The Hon'ble Apex Court in a recent judgment in the case of **Rahul Ganpatrao Sable Vs. Laxman Maruti Jadhav (dead) Through L.Rs. and others**², at para 8 held as under:

“The submission is that it is not a case of death, but it is a case of injury and, as such, there was no question of any deduction towards personal expenses. Once again, reference was made to the judgment of this Court in Lalan D (supra).”

21. In the case on hand, admittedly the learned Tribunal deducted 1/3rd amount towards personal expenses, though it is a petition filed U/s.166 of Motor Vehicles Act 1988, claiming compensation for personal injuries. Therefore, in view of the judgments of the Hon'ble Apex Court referred supra, deduction of 1/3rd towards personal expenses is not justified. Hence, the deducted amount be included in the award amount.

¹ 2020 (9) SCC 805

² 2023 SCC Online SC 780

22. Therefore, the monthly income of the deceased shall be fixed Rs.100 x 30 = Rs.3,000/-; the annual income of the deceased will be Rs.3,000 x 12 = Rs.36,000/-. The learned Tribunal considered the age of the claimant as '47' years at the time of accident, and applied multiplier '13' as per judgment of the Hon'ble Apex Court in the case of **Sarla Verma and another Vs. Delhi Road Transport Corporation and others**³.

23. In the light of above discussion, the loss of future earnings on account of permanent disability is Rs.36,000 x 13 = Rs.4,68,000/-, and 65% of Rs.4,68,000/- is Rs.3,04,200/-. Therefore, the claimant in all entitled to Rs.3,04,200 + 3,10,218 + 40,000 = Rs.6,54,418/- towards just compensation, instead of Rs.5,53,018/-, awarded by the learned Tribunal. In that view of the matter, the finding of the learned Tribunal warrants interference of this Court.

24. The claimant is entitled to interest on the compensation amount of Rs.6,54,418/- as per section 171 of M.V.Act, 1988. The learned Tribunal awarded interest at 7.5% p.a. from the date of petition, till the date of realisation. Considering the date of accident and prevailing rate of interest, this Court do not find any ground to interfere with the rate

³ 2009 ACJ 1298

of interest awarded by the Tribunal at 7.5% p.a., from the date of petition, till the date of deposit, in view of the Apex Court judgement in **National Insurance Company Limited Vs. Mannat Johal**⁴.

25. Considering the facts and circumstances of the case, the appeal filed by the claimant be allowed partly, by modifying the award and decree passed by the learned Tribunal. Accordingly, the point is answered.

26. **POINT No.2:** To what relief?

In the light of finding on point No.1, the appeal in MACMA 2471/2013 is liable to be partly allowed, by modifying the award and decree dated 11.06.2012 passed in M.V.O.P.No.328/2009 on the file of Motor Accidents Claims Tribunal-cum-II Addl.District Judge, Proddutur, Kadapa District. The Appeal in MACMA 2415/2013 filed by the APSRTC is liable to be dismissed.

27. In the result, the appeal in MACMA 2471/2013 is partly allowed, holding that the appellant/claimant is entitled to a compensation of Rs.6,54,418/- (Rupees Six Lakhs, Fifty Four Thousand, Four Hundred and Eighteen only) with interest @ 7.5% p.a. from the date of petition, till the date of deposit, instead of Rs.5,53,018/- as awarded by the

⁴ 2019 ACJ 1849 (SC)

learned Tribunal, against the respondent. There shall be no order as to costs.

28. The appeal in MACMA 2415/2013 is dismissed. The respondent/APSRTC is directed to deposit the compensation amount of Rs.6,54,418/- (Rupees Six Lakhs, Fifty Four Thousand, Four Hundred and Eighteen only), along with accrued interest thereon, within eight (08) weeks from the date of judgment. In the event of the respondent/APSRTC had already deposited some amount, the said amount be excluded, and the balance amount shall be deposited within eight (08) weeks from the date of judgment.

29. On such deposit, the claimant is permitted to withdraw the said amount along with accrued interest thereon.

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

B.V.L.N. CHAKRAVARTHI, J

26.12.2023

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HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI

M.A.C.M.A.No.2415 OF 2013 & 2471 OF 2013

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26th December, 2023

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