



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3333]

MONDAY, THE NINTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SMT JUSTICE V.SUJATHA

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 73/2023

Between:

1.THE ORIENTAL INSURANCE COMPANY LTD,, REP. BY IT'S
DEPUTY MANGER, T.P HUB, GUTTIKONDA ZOOM PLAZA, NEAR
VINAYAK THEATRE, RING ROAD, VIJAYAWADA-10

...APPELLANT

AND

1.JOGI SIVA KRISHNA, S/O RAMA RAO, AGE 35 YEARS OCC
TRANSPORT DRIVER, R/O D.NO.6-10, KATTAVARIPALEM,
YANAMADURRU VILLAGE, BHIMAVARAM MANDAL, WEST
GODAVATI DISTRICT.

2.CHADALAWADA SURESH BABU, S/O HANUMANTHU RAO, AGE 42
YEARS, OCC DRIVER OF VIGNAN SCHOOL BUS BEARING NO.AP
37 TF 0604, RIO ALAMAPURAM VILLAGE, CHRISTIANPETA,
PENTAPADU MANDAL, WEST GODHAVARI DISTRICT.

3.M/S VIGNAN EDUCATIONAL SOCIETY, REP BY .G. LAKSHMI
NARAYANA, OCC OWNER OF VIGNAN SCHOOL BUS BEARING
NO.AP 37 TF 0604,RJO ALAMAPURAM VILLAGE, PENTAPADU
MANDAL, W.G.DISTRICT.

...RESPONDENT(S):

Appeal filed under Order 41 of CPC praying that the High Court may be
pleased to Set aside the order and decree dated 27.06.2022 passed in
M.V.O.P No.64 of 2018 on the file of the Chairman Motor Vehicle Accidents

Claims Tribunal Cum III Additional. District AND sessions Judge, Bhimavaram and pass

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to condone the delay of 1,32y days in filing appeal against Judgment and dated 27-06-2022 passed in M.V.O.P No.64 of 2018 on the file of the Chairman, Motor Vehicle Accidents Claims Tribunal-Cum-III Additional. District& sessions Judge, Bhimavaram or else the deponent herein will be put to irreparable loss and hardship and pass

IA NO: 2 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings of the Judgment and Decree dated 27-06-2022 passed in M.V.O.P No.64 of 2018 on the file of the Chairman Motor Vehicle Accidents Claims Tribunal- Cum -III Additional. District& sessions Judge, Bhimavaram or else the deponent herein will be put to irreparable loss and hardship and pass

IA NO: 3 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to permit the withdraw deposited amount in MACMA No. 73 of 2023 in MVOP No. 64 of 2018 order dt.10.03.2023 on the file of the Motor Accidents Claims Tribunal Cum III Additional District and Sessions Judge at Bhimavaram and pass

Counsel for the Appellant:

1.V RAGHU

Counsel for the Respondent(S):

1.CHAKRADHARA RAJA Y

The Court made the following:

JUDGMENT:

The Oriental Insurance Company Ltd., filed the present appeal challenging the order and decree 27.06.2022 in M.V.O.P.No.64 of 2018 on the file of the Court of the Motor Accidents Claims Tribunal-cum-III Additional District Judge, Bhimavaram, whereby and whereunder the Tribunal granted compensation of Rs.6,14,000/- (Rupees Six Lakhs Fourteen Thousand only) to the petitioner for the injuries sustained by him in a motor accident that occurred on 27.06.2022.

02. For the purpose of convenience, the parties will be referred to as they are arrayed before the Tribunal.

03. The case of the petitioner is briefly as follows:

The petitioner is a resident of Yanamadurru Village of Bhimavaram Mandal. He is aged about 30 years. He is a Transport Driver. On 20.05.2017, the injured along with his minor son and his sister started from his village on Bajaj Pulsar Motorcycle bearing No.AP 37 CL 3295 to Mamuduru Village to attend a function. On 20.05.2017 at about 10.45 AM, when they reached near Old RTC Office at Garagaparru Road, Bhimavaram Town, they found a bus bearing No.AP 37 TF 0604 driven by the 1st respondent who is the driver of the Vignan School Bus, who came from opposite direction in a rash and negligent manner without taking any precautionary measures. As a result of negligence of 1st respondent the left side of rear side two wheels of said school bus detached from the vehicle and one wheel with high speed bounced

on the road and hit the injured, as a result of which he sustained grievous fracture injuries to his right leg and bleeding head injury, immediately the petitioner and his son was shifted to Avinash Orthocare Hospital, Bhimavaram and the petitioner spent an amount of Rs.1,00,000/- for his medical expenses. Prior to the date of accident, the petitioner was working as a transport driver; on account of the complications developed because of the fracture to left leg he is unable to discharge his functions as previously. Thus, he got permanent disability. He used to earn about Rs.15,000/- per month prior to the accident and due to the injuries sustained in the accident, therefore, he sought compensation of Rs.10,00,000/- from the respondents.

04. Before the Tribunal, respondent Nos. 2 and 3 remained *ex parte*.

05. Respondent No.3/APSRTC filed a written statement, opposing the claim petition, stating that on the date of accident, the petitioner drove the motor cycle bearing No.AP.37 CL 3295 in a rash and negligent manner, he failed to take precautions and contributed negligence on his part in the alleged accident. It was further contended that the petitioner did not possess any valid driving license and documents of the said vehicle. The 2nd respondent who is the owner of the offending vehicle and not having a valid and proper Registration Certificate, Permit and Fitness Certificate for the said offending vehicle. Thus, it is prayed to dismiss the petition.

06. Basing on the pleadings, the Tribunal framed the following issues for trial:

“1. Whether the 1st respondent drove school bus bearing No.AP 37 TF 0604 in a rash and negligent manner at the place and time of accident occurred on 20.05.2017 in which Jogi Siva Krishna sustained grievous injuries ?

2. Whether the petitioner is entitled to get compensation from respondents?

3. If so, to how much amount ?

4. To what relief?”

07. On behalf of the claimants, the petitioner got examined as P.W.1 and examined the Medical Officer as PW.2, apart from him examined his employer as PW.3 and Exs.A1 to A14 were marked. On behalf of respondent No.3, R.W.1 was examined and Ex.B1 was marked and Motor Vehicle Inspector was examined as RW.2.

08. After hearing both parties and after considering the oral and documentary evidence on record, the Tribunal partly allowed the claim petition against respondent No.3, awarding compensation of Rs.6,14,000/-(Rupees Six Lakhs Fourteen Thousand only) with subsequent interest @9% per annum from the date of filing of the petition till the date of realization within 30 days and thereafter respondent No.3 can recover the same from respondent Nos.1 & 2 without filing any separate proceedings and by filing execution petition.

09. Aggrieved by the said award, the respondents No.3 preferred this appeal contending that the Tribunal failed to consider that the accident occurred solely due to the negligence on the part of the petitioner as he drove the bike under the influence of alcohol. It is further contended that the injuries

sustained by the petitioner are minor in nature and that he did not suffer any functional disability. It is further contended that the compensation awarded by the Tribunal is exorbitant and excessive, therefore, prayed to allow the appeal.

10. On the other hand, learned counsel for the claimant/respondent No.1 herein has supported the impugned award and prayed to dismiss the appeal.

11. Now the point for consideration is:

Whether the order of the Tribunal needs any interference?

POINT:

12. Though it is the contention by the learned counsel for the appellant that there is contributory negligence on the part of the injured in occurrence of the incident and that the Tribunal failed to consider the said aspect.

13. On a perusal of the award passed by the Tribunal, it is observed that, based on the evidence of PW1 and RW2, coupled with Ex.X1 (copy of FIR), which discloses that immediately after the accident, on the statement of the injured, due to the impact of the rear-side wheel of the vehicle, PW1 sustained grievous injuries, and Ex.A3 (M.V. Inspector's Report), which also shows that the cause of the accident was due to the left-side wheel coming off from the hub and hitting the scooter, the Tribunal held that the accident occurred due to the negligence of the driver, who failed to properly inspect the vehicle before operating it. Accordingly, respondent No.1 was held liable for the accident, and respondent No.2, being the owner of the offending vehicle, was also held

liable. Respondent Nos.1 and 2, being the driver and owner, along with respondent No.3, the insurer of the said vehicle, were held liable to pay compensation. However, since the accident occurred due to the negligence of respondent No.1, the Tribunal directed respondent No.3 to initially pay the compensation amount and recover the same from respondent Nos.1 and 2. In the opinion of this Court, the said direction is just and reasonable and requires no interference.

14. Ex.A8 X-ray shows the details of crush injury and Ex.A2 wound certificate shows that there is deformity due to sustained grade one open fracture right femur with wound over right thigh and the said wound was grievous in nature. The percentage of disability assessed at 87%. When the said treatment is endorsed by the various documents mentioned above supported by the evidence of PW2, Doctor, and unchallenged evidence goes to prove the accident was occurred due to rash and negligent act of the 1st respondent/driver. Nothing was elicited during his cross-examination to disbelieve his testimony and no evidence is put forth to say that there is contributory negligence on the part of the injured in causing the accident. Therefore, it is rightly held by the Tribunal, that the Respondent No.1 is responsible for the accident.

15. Now, with regard to the compensation, though the age of the petitioner was 30 years as on the date of accident, the petitioner used to work as driver in the entity of PW3 and used to get salary of Rs.15,000/- per month, the

Tribunal considered the salary of the petitioner as Rs.15,000/- per month and as the claimant was under treatment for a period of 21 months i.e., from 20.05.2017 to February, 2019, the claimant was entitled for an amount of Rs.3,15,000/-(Rs.15,000/- x 21) towards loss of earnings during the period of treatment. In addition to the above, the Tribunal also awarded a sum of Rs.1,24,000/- towards medical expenses, Rs.1,00,000/- towards pain and suffering as a consequence of injury, Rs.75,000/- towards transportation, extra-nourishment and attendant charges. In total, the Tribunal below awarded Rs.6,14,000/- (Rs.3,15,000/- + Rs.1,24,000/- + Rs.1,00,000/- + Rs.75,000/-) to the claimants which is well reasoned. Thus, no interference is required with the said finding of the Tribunal. Having regard to the above discussion, no interference necessitates to the findings recorded by the Tribunal regarding all aspects and as there is no need to disturb the well-articulated order passed by the Tribunal, as such, the appeal preferred by the appellants is liable for dismissal.

16. Viewed from any angle, this Court does not find any ground to interfere with the award impugned in this appeal.

17. In the result, the appeal is dismissed. No costs.

Pending miscellaneous applications, if any, shall stand closed.

JUSTICE V.SUJATHA