



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

[3548]

MONDAY, THE FIFTH DAY OF JANUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE TUHIN KUMAR GEDELA

MOTOR ACCIDENT CIVIL MISCELLANEOUS APPEAL NO: 3352/2017

Between:

1. THE DEPOT MANAGER, APSRTC KAKINADA EAST GODAVARI DISTRICT
2. MANAGING DIRECTOR APSRTC, MUSHEERABAD, HYDERABAD.

...APPELLANT(S)

AND

1. PACHIPULUSU MARUTHI SHYAM KUMAR SYAMBABU S/O VENKATESWARA RAO, D NO 6-93 VINAYAK NAGAR COLONY ELURU, WEST GODAVARI DISTRICT
2. CHERUKURI LAKSHMIPATHI RAJU S/O SATYANARAYANA RAJU, THARANGI, KAKINADA, EAST GODAVARI DISTRICT

...RESPONDENT(S):

Appeal filed under Order 41 of CPC praying that the Highcourt may be pleased to

IA NO: 1 OF 2017

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 grant stay of execution of Decree passed by Motor Accidents Claims Tribunal (Principal District Judge) West Godavari at Eluru passed in M.V.O.P.No. 402 of 2010 dated 08.08.2017 pending disposal of the above M.A.C.M.A.No. /2017 and pass

Counsel for the Appellant(S):

1..

2.K SRINIVASA PRASAD SC For APSRTC

Counsel for the Respondent(S):

1.SRINIVAS EMANI

The Court made the following:**JUDGMENT**

Heard Sri Y.Chakradhar Raju, learned counsel appearing on behalf of Sri K.Srinivasa Prasad, learned Standing Counsel for APSRTC appearing for the appellants and Sri B.Sanjaiah Gandhi, learned counsel appearing on behalf of Sri Srinivas Emani, learned counsel for the respondent No.1/claimant.

2. Dissatisfied with the order passed in M.V.O.P.No.402 of 2010 by the Motor Accidents Claims Tribunal-cum-Principal District Judge, West Godavari, Eluru, the present appeal is filed by APSRTC and the 1st respondent herein is the claimant and the 2nd respondent herein is the RTC Driver.

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

4. The facts leading to the case, as raised in the present appeal as well as before the Tribunal, are as follows:

The injured petitioner was aged about 20 years and was working as a Computer Mechanic in the Global Computer Centre, Eluru and was earning Rs.10,000/- per month as on the date of accident. The accident took place on 11.09.2009 while the injured was going on motor cycle bearing No. AP 37 AR 5095 to fix camera in the ATM centre of Union Bank, Suryarao Street, Kakinada and when reached near Satyanarayana Swamy Temple, the accident vehicle i.e., APSRTC bus bearing No. AP 10Z 9333 came in a rash and negligent manner and dashed the motor cycle, due to which the bus has ran over his leg, resultantly sustained fracture to his left leg and also received certain injuries lacerated to his right hand elbow joint. The injured was shifted to the Government General Hospital, Kakinada and from there, he was shifted to the Government Hospital, Vijayawada and thereafter, to Royal Hospital, Vijayawada, where he underwent operation on 12.09.2009, to his left leg and

on 21.09.2009, he was later shifted to Peoples Poly Clinic, where skin grafting was done and finally, discharged on 07.10.2009.

5. A crime was registered in crime No.177 of 2009 for the offence under Section 338 of Indian Penal Code, 1860, against respondent No.2. The main assertion of the claimant is that due to the injuries, he sustained permanent disability and lost his earning capacity and prayed for joint and several liability to pay the compensation by the respondents.

6. The respondent Nos.1 and 2 remained *ex parte* in the Court below and respondent No.3, who is the appellant herein refuted the contentions of the claimant in the MVOP by filing a written statement stating that there is no negligence on the part of the respondent No.1 and the accident occurred only due to the rider of the motor cycle who could not control and fell down.

7. Basing on the pleadings before the Court below, three issues were framed.

1. Whether there is any rash and negligent driving on the part of the driver driving APSRTC bus bearing No. AP 27T 5477?

2. Whether the petitioner is entitled for the compensation as claimed and to what relief?

8. The first issue was answered in favour of the claimant by the Tribunal, after elaborate discussion of the evidence adduced by the claimant. The Tribunal has come to the conclusion that there is rash and negligent driving by the 1st respondent-driver, after examining the witnesses P.Ws.1 to 3. The Tribunal has taken note of Ex.A4, which is the charge sheet, confronting that the Police found fault with the 1st respondent and alleged that the accident occurred due to rash and negligent driving of the 1st respondent.

9. Learned counsel for the appellant before this Court has placed reliance upon the judgment, **T.O.Anthony vs. Karvarnan and others**¹ to fortify his arguments that when there is a composite negligence by both the parties, awarding of compensation cannot be loosely taken note of. The judgment of the Tribunal, as seen, in its holistic reading, can be noted that there is any contributory negligence or composite negligence and the Tribunal concluded that it is only due to the rash and negligent driving of the Driver of the 1st respondent and did not rely upon the judgment as it is distinguishable. Having held that there is rash and negligent driving established, the issue No.1 was answered in favour of the claimant.

10. Insofar as the issue No.2, the claimant placed the salary slips issued by of the employer, Global Computer Centre, Eluru, to establish that he was earning an amount of Rs.10,000/- per month as on the date of accident, which occurred on 11.09.2009. The claimant further placed strong reliance upon the treatment slips/bills of the Hospital, where he spent an amount of Rs.2,50,000/-. To prove the statement, he got examined two doctors, P.Ws.4 and 5. P.W.4 is the Doctor of the Royal Hospital, who stated that the claimant was admitted in the Hospital with the injuries of fracture left femur and vascular injury to left thigh and on 12.09.2009 the petitioner underwent surgery and during surgery interlocking nail of femur and repair of left popliteal artery with vein graft was done. The bills were marked by the claimant as exhibits from Exs.A6 to A87 to establish that he has incurred an amount of Rs.2,50,000/-. The Tribunal, after considering the said exhibits-bills, awarded Rs.2,20,000/- under the head of Hospital, Medical and other expenses. In support of the said awarding of compensation, the Tribunal has relied upon the judgment of this Court in **Managing Director, Andhra Pradesh State Road Transport Corporation v. Kathavath Gopal**², which held that the compensation towards expenditure incurred and transportation cannot be denied even though the

¹2008 (3) SSC 748

²2003 (5) ALD 198

treatment was given in the Government Hospital and one cannot be expected to produce the evidence proving the actual expenditure, and, hence some reasonable hypothesis cannot be ruled out. Towards transportation, incidental charges, future expenditure and other expenses, a sum of Rs.20,000/- was awarded.

11. Now, coming to the salary certificate adduced as Ex.A5, purported to be issued by the employer of the claimant, the Tribunal has not considered the said certificate merely on the ground that the salary certificate was not proved by examining the employer and on hypothesis basis, an amount of Rs.6,000/- was awarded and further he was out of work for six months. So, in total, the Tribunal has awarded compensation of Rs.36,000/-. The Tribunal, under the Head-Injury, Shock, Pain and Suffering, awarded a sum of Rs.1,50,000/-, under the Head-Hospital, Medical and other expenses awarded an amount of Rs.2,20,000/-, Rs.36,000/- under the Head-loss of earning, past and present and Rs.20,000/- under the Head-Transportation, Incidental Charges, Future Expenditure and others. In total, a sum of Rs.4,26,000/- was awarded as compensation to that of Rs.10,00,000/- as claimed by the claimant.

12. The expenditure said to have been incurred by the claimant by adducing the evidence and marking all the bills issued by the Hospitals and other treatment agencies, was of Rs.2,50,000/- asserted by the claimant. When coming to the aspect of earning capacity, it is seen that the salary slip is of Rs.10,000/- per month issued by the Global Computer Centre, where the claimant was working as Computer Mechanic. It is an established law that a salary slip indicating the amount, which is the earning, issued by the competent authority, should not be loosely denied except when there is a strong opposition by the respondents or the insurance company. Nowhere in the judgment of the Tribunal this Court finds that there is refutation by the appellant herein regarding the said salary, being salary towards monthly income issued by the employer and as stated above, the Tribunal has taken

on hypothesis basis as Rs.6,000/-. This Court finds that the Tribunal recorded erroneous findings by picking holes in the evidence when there is no strong rebuttal by the appellant-APSRTC. Taking into consideration the facts and circumstances, this Court is of the opinion that an amount of Rs.8,500/- would be reasonable in awarding compensation towards loss of earnings, past and present and under the Head-Hospital, Medical and other expenses, taking all the bills into consideration, the total amount would be Rs.2,50,000/-. The Tribunal has not taken note of the judgment of this Court in **Managing Director's** case, where un-debatable grounds held that compensation towards expenditure and transportation cannot be denied. Admittedly the claimants placed all the necessary bills issued by the authorities towards treatment and in view of the said observation by this Court, there is no justification for the Tribunal to deviate from the above ratio and hence the amount of Rs.2,50,000/- as claimed is justified.

13. For the above reasons, this Court is of the opinion that the claimant is entitled for enhancement of Rs.30,000/- under the Head-Hospital, Medical and other expenses and Rs.8,500/- for six months ($\text{Rs.8500} \times 6 = \text{Rs.51,000/-}$) under the Head-loss of earnings, past and present. Therefore, the total compensation is as under:

S.No.	Head	Compensation Awarded
1.	Compensation under the Heads injury, shock, pain and suffering	Rs.1,50,000/-
2.	Compensation under the heads Hospital, Medical and other expenses	Rs.2,50,000/-
3.	Compensation under the Head of Loss Earnings, Past and Present	Rs.51,000/-
4.	Compensation under the Head of Transportation, Incidental Charges, Future Expenditure and other expenses	Rs.20,000/-
Total:		Rs.4,71,000/-

14. In fine, the Motor Accidents Civil Miscellaneous Appeal is dismissed. However, the order passed by the Tribunal is modified, enhancing the compensation granted to the claimants from Rs.4,26,000/- to Rs.4,71,000/- with interest @ 9% per annum. The appellants and 2nd respondent herein are directed to deposit the aforesaid enhanced amount of compensation before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this judgment, after deducting the amount, if any, deposited earlier. On such deposit, the claimant is entitled to withdraw the same.

15. As a sequitur, Interlocutory Applications pending, if any, shall stand closed.

JUSTICE TUHIN KUMAR GEDELA

Date: 05.01.2026
MDP