

ITEM NO.53

COURT NO.11

SECTION

XIIA

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).9019 OF 2004

(From the judgment and order dated 04/11/2003 in AAO No. 37/2002
of HIGH COURT OF A.P AT HYDERABAD)

A.P.S.R.T.C.

Petitioner

(s)

VERSUS

P. THIRUPAL REDDY

Respondent

(s)

(With prayer for interim relief and office report)

Date: 14/02/2005 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

HON'BLE MR. JUSTICE H.K. SEMA

For Petitioner(s)

Mr. R. Santhan Krishnan, adv.

Mr. Sateesh Galla, Adv.

Ms. K. Radha Rani, Adv.

Mr. D. Mahesh Babu, Adv.

For Respondent(s)

Mr. Shib Shankar Sarkar, Sr. Adv.

Mr. Pradyot Kumar Chakravarty, Adv.

Mr. Prasenjit Kr. Chakravarti, Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

(S. Thapar)

(Shelly Sengupta)

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PS to Registrar

Court Master

The signed order is placed on the file.

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO..... OF 2005

(Arising out of SLP(C)No. 9019/2004)

A.P.S.R.T.C.

Appellant (s)

Versus

P. Thirupal Reddy

Respondent (s)

O R D E R

Leave granted.

Heard learned counsel for the parties.

This appeal has been preferred by Andhra Pradesh State Road Transport Corporation, which was the owner of the bus involved in the accident, against the enhancement of compensation awarded for injury to the claimant - respondent. In a joint trial of Claim Petition filed by the scooterist and the pillion rider (the present respondent), the Claims Tribunal estimated the disability caused by injury to the pillion rider at 15 per cent and awarded a sum of Rs.34,552/- as compensation with 12 per cent interest payable thereon. The Tribunal did not rely on the

medical certificate of Dr. Sudhakar Reddy in which the physical disability was 45 per cent. The reason for rejecting the medical certificate was that Dr. Sudhakar Reddy was not examined in support of the certificate issued by him.

The High Court in appeal, however, placing reliance on the disability certificate issued by Dr. Sudhakar Reddy enhanced

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the quantum of compensation and awarded a sum of Rs.1,53,867/-(one

lac, fifty three thousand and eight hundred and sixty seven only)

which has been challenged in this appeal.

Learned counsel for the appellant has invited our attention to the deposition of Dr. K.M. Mitra who had also medically examined the injured. According to his statement, out of seven injuries caused in the accident to the pillion rider, only injury number five was grievous and is described as 'fracture, deformity of right thigh with swelling.' But in the cross-examination Dr. Mitra has stated that it would not cause any permanent disability, if property treated.

After hearing learned counsel for the respondent - claimant who made an attempt to support the order of the High Court, we find that there was no justification for the High Court to rely on the disability certificate issued by Dr. Sudhakar Reddy to enhance the compensation by treating the injury as permanent disability to be 45 per cent. The High Court committed gross error in overlooking the fact that Dr. Sudhakar Reddy's medical certificate was rejected by the Tribunal for non-examination of that doctor. The Tribunal has determined the physical disability at 15 per cent on the basis of the deposition of Dr. K.M. Mitra and awarded a just and fair compensation. The High Court erred in disturbing the same and enhancing the compensation. Consequently, we allow this appeal, set aside the impugned order and restore the award of the Claims Tribunal. The respondent - claimant is allowed to withdraw the amount of compensation awarded by the Tribunal, if it has not already been withdrawn.

The appeal is allowed accordingly.

.....J

(D.M. DHARMADHIKARI)

New Delhi,

.....J

February 14, 2005

(H.K. SEMA)