

Managing Director, APSRTC, Mushirabad, Hyd. Vs Om Prakash Agarwal and another

Court: Andhra Pradesh High Court

Date of Decision: Oct. 12, 1999

Acts Referred: Motor Vehicles Act, 1988 " Section 168

Citation: (2001) ACJ 526 : (1999) 6 ALD 732 : (1999) 6 ALT 676

Hon'ble Judges: Elipe Dharma Rao, J

Bench: Single Bench

Advocate: Mrs. G. Jyothi Kiran, for the Appellant; Mr. N.S. Pattabi Rama Rao, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. This appeal is filed by the Andhra Pradesh State Road Transport Corporation, Hyderabad aggrieved by the award passed in OP No.373 of

1987 dated 30-3-1990 on the file of the Motor Accident Claims Tribunal, Khammam, wherein the Tribunal below has awarded a sum of

Rs.2,43,000/- towards compensation for the injuries sustained by the claimant in a motor vehicle accident that was occurred on 26-5-1987.

2. The case of the petitioner in brief is as follows: on 26-5-1987 the petitioner boarded an Road Transport Corporation bus bearing No.AAZ

8466 at Kothagudem to go to Hyderabad and the petitioner sat on the back seat of the bus resting himself leaning over the body of the bus inside.

The 1st respondent drove the bus at a high speed and even continued so when it was about to reach Enkur village. At that time, lorry was coming

in the opposite direction visible to the 1st respondent from a long distance and that the 1st respondent did not slow down the speed and lost

control and that the bus went towards right side from the middle of the road and grazed the oncoming lorry which was also coming at a high speed.

As the bus rear side had its right side, where the petitioner was resting inside keeping his right hand a little on the window had grazed the on

coming lorry and that the right hand of the petitioner was severely injured and resulted in heavy bleeding. The accident was occurred only on

account of the rash and negligent driving of the bus by its driver i.e., the 1 st respondent. After the accident, the petitioner was taken to the

Government headquarters hospital, Khammam in the same bus and later he was shifted to Nizam Orthopaedic hospital on 27-5-1987 and on the

same day, the right hand was amputated above the joint. The petitioner was remained in the hospital for one month and discharged. At the time of

the occurrence of the accident, the petitioner was an Accountant for Agarwal Automobiles situated at Kothagudem and other Agencies and used

to earn Rs.2,500/-per month. Thus the petitioner claimed Rs.4,35,000/- towards compensation. The 2nd respondent-Andhra Pradesh State Road

Transport Corporation has filed a counter denying the allegations made in the claim petition and that the accident was not occurred due to the rash

and negligent driving of the driver of the Road Transport Corporation bus. The version of the respondent is that on seeing the lorry in the opposite

direction, the 1st respondent took the bus to the extreme left of the road and was proceeding. The lorry passed very close to the bus coming on

the right side of the road. After passing a few yards, the passengers in the bus shouted and that the 1st respondent immediately stopped the bus.

The 1 st respondent got down from the bus and saw a passenger (Petitioner) who was sitting on the right side of window, has lost his right hand

cut by the closely passing lorry. Therefore, it is due to the sheer negligence on the part of the petitioner in stretching his hand out of the window of

the bus, the accident was occurred, and that the respondents are not liable to pay compensation.

3. After appreciating both oral and documentary evidence available on record, the Tribunal below held that the accident was occurred due to the

rash and negligent driving of the driver of the Andhra Pradesh State Road Transport Corporation bus i.e., the 1st respondent and therefore the

respondents are liable to pay compensation and that the Tribunal below has awarded a sum of Rs.2,43,000/- towards compensation to the

claimant.

4. The learned Counsel for the appellant-Andhra Pradesh State Road Transport Corporation submitted that the Tribunal below erred in holding

that the accident was occurred due to the rash and negligent driving of the bus and it ought to have held that the accident was occurred due to the

negligence of the claimant himself, who travelled in the bus by stretching his hand outside the window of the bus and that he himself invited the

accident and sustained injuries. The contention of the learned Counsel for the appellant cannot be accepted in view of the principle laid down in the

Division Bench Judgment of this Court reported in Andhra Pradesh State Road Transport Corporation, Hyderabad v. Dodda Somayajulu

Sitarama Murthy, 1982 (2) ALT 207, wherein it is held that:

Negligence could be inferred by the applicability of doctrine of res ipsa loquitur. If the accident by its very nature is more consistent with its being

caused by negligence of the driver, than by the other causes, then the mere fact of the accident is prima facie evidence of such negligence. In such a

case it is on the driver of the vehicle to explain as to how the accident occurred without negligence on his part. The driver has to show any specific

cause not connoting negligence on his part in that he used all reasonable care expected of him. The burden is on the driver to show that he had

taken all reasonable care in driving the vehicle.

5. The evidence of the driver of the bus is that when he reached the outskirts of Enukur, the passengers raised alarm and shouted to stop the bus

and by then the lorry came in the opposite direction and passed on the bus and that he stopped the bus and saw that the claimant sustained injuries.

Therefore, it is clear from the evidence of the driver of the bus (RW1) that he has not taken necessary care and caution towards the passengers

while driving the bus. Therefore, I have no hesitation to come to the conclusion that the finding of the Tribunal below that the accident was

occurred due to the rash and negligent driving of the driver of the bus is just and correct and the same is confirmed.

6. With regard to the quantum of compensation awarded by the Tribunal below is concerned, the Tribunal below while fixing the disability of the

claimant at 50% and taking the income of the claimant at Rs.2000/- per month and by applying the multiplier at 13.79 as the claimant was aged 40

years at the time of the accident, has awarded a sum of Rs.1,65,600/- towards loss of future earnings of the claimant. In my view, the said amount

awarded by the Tribunal under the head of loss of future earnings is just and correct. Further the Tribunal below has awarded Rs.50,000/-

towards non-pecuniary damages; Rs. 15,000/- towards medical expenses and Rs.12,000/- towards loss of past earnings for a period of six

months. But I am inclined to award Rs.50,000/- under all these heads. Thus, the claimant is entitled to a total sum of Rs.2,15,600/- (Rs. 1,65,600 +

Rs.50,000) towards compensation.

7. In the result, the appeal is partly allowed by reducing the compensation from Rs.2,43,000/- to Rs.2,15,600/- with interest at 12% p.a. from the

date of petition till the date of realisation. But in the circumstances of the case, no costs.