

**(1999) 10 AP CK 0016**

**Andhra Pradesh High Court**

**Case No:** CMA No. 1005 of 1991

Managing Director, APSRTC,  
Mushirabad, Hyd.

APPELLANT

Vs

Om Prakash Agarwal and  
another

RESPONDENT

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**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

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### **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 Erukur, 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.