

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.2067 of 2006

JUDGMENT:

Dissatisfied with the order, dated 08.06.2006, in O.P.No.1196 of 2003, passed by the Principal Motor Accidents Claims Tribunal, Nalgonda (for short 'Tribunal') awarding Rs.33,000/- towards compensation with 7.5% interest per annum from the date of O.P. till realisation, as against Rs.1,00,000/- claimed under Section 166 of the Motor Vehicles Act, 1988, for the injuries received, the claimant preferred this appeal seeking enhancement.

2. The appellant herein is the petitioner (claimant), while respondent Nos.1 and 2 herein - owners and respondent No.3 herein - insurer of the auto bearing registration No.AP 16 X 9703 that involved in the accident, are respondent Nos.1 to 3, respectively, in the O.P. before the Tribunal.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the Tribunal.

4. The facts, in brief, are that on 15.08.2003, while the petitioner was travelling in the auto bearing registration No.AP 16 X 9703 from Suryapet to Nereducherla, when the auto reached the outskirts of Imampet village near H.P.C.L., it was driven in a rash and negligent manner by its driver resulting in auto moving towards wrong side of the road and dashing another auto bearing registration No.AP 24 U 9247. As a result of the said accident, the petitioner received injuries. Police registered a case in crime No.53 of 2003 under Section 337 I.P.C. According to the petitioner, immediately after the accident, she was shifted to Government Hospital, Suryapet and after discharge, she took treatment in a private hospital. Due to the accident, the petitioner sustained fractures and injuries, and therefore, she claimed

compensation of Rs.1,00,000/- before the Tribunal.

5. Respondent Nos.1 and 2 – owners of the auto remained *ex parte* and respondent No.3 – insurer filed counter before the Tribunal opposing the claim.

6. The Tribunal, basing on the pleadings, framed the following issues:

1. Whether the petitioner received injuries in the road accident? If so, whether the accident occurred due to the rash and negligent driving of the auto bearing registration No.AP 16 X 9703 by its driver?
2. Whether the petitioner is entitled to claim compensation? If so, to what amount and from whom?
3. To what relief?

7. During enquiry, the petitioner examined herself as PW.1, and also examined the Doctor at private hospital as P.W.2, apart from marking 7 documents as Exs.A-1 to A-7. On behalf of respondent No.3 - insurer, no oral evidence was let in, however, marked Ex.B-1 insurance policy.

8. The Tribunal, on issue No.1, having appraised the oral and documentary evidence let in, held that only on account of rash and negligent driving of the driver of the auto in which the petitioner was travelling, the accident had occurred and due to the accident, the petitioner sustained fractures and injuries. Accordingly, the Tribunal found favour with the petitioner on this issue.

9. The Tribunal, on issue No.2, basing on the evidence of P.W.2, Doctor, whom the petitioner approached for the follow up treatment, and since the petitioner sustained fractures, stiffness of the right knee joint and injuries, due to which she could not squat and could not walk as before, for the pain and suffering granted a sum of

Rs.15,000/- per fracture and Rs.1,500/- per simple injury. As the petitioner sustained two fractures and two simple injuries, the Tribunal calculated the compensation at Rs.33,000/-. The Tribunal also granted interest on the compensation at 7.5% per annum from the date of O.P. till realisation making respondent Nos.2 and 3 jointly and severally liable to pay the compensation. Aggrieved by the same, the instant appeal is preferred by the petitioner on the ground that the Tribunal awarded meagre sum towards compensation and contended that the Tribunal did not properly appreciate the evidence on record and ought to have awarded the entire claim basing on the disability certificate – Ex.A-6 issued by P.W.2 - Doctor.

10. Heard Sri M.Rajamalla Reddy, learned counsel for the appellant – petitioner (claimant). There is no representation for respondent No.3 and on behalf of respondent Nos.1 and 2, none appeared.

11. Now, the short point that arises for consideration is whether the compensation awarded by the Tribunal is just and adequate and whether it needs to be enhanced as sought for?

12. I have perused the order of the Tribunal and the evidence let in by the petitioner viz., P.Ws.1 and 2 and Exs.A-1 to A-7. As per the wound certificate, which was marked as Ex.A-3, the petitioner sustained fracture and dislocation of right knee joint with fracture of patella and stiffness of the right knee joint. Admittedly, she was treated in Osmania General Hospital, Hyderabad and after discharge therefrom, she took follow up treatment from P.W.2, who is Orthopaedic Surgeon in Vaidyalayam Clinic at Suryapet. Keeping in view, that the petitioner sustained two fractures and two simple injuries and since there is evidence to show that there was follow up treatment before P.W.2 - Doctor, it is desirable to observe that not only she is entitled to Rs.15,000/- per fracture as awarded by the Tribunal towards pain and suffering besides Rs.3,000/- per simple injury over and above

Rs.1,500/- awarded by the Tribunal under the said head but also entitled to a sum of Rs.2,000/- towards extra nourishment and Rs.3,000/- towards attendant and transport charges,. Though the disability certificate, which was marked as Ex.A-6, issued by P.W.2 Doctor, shows that the petitioner suffered 60% disability, the same cannot be accepted in view of the fact that P.W.2 is not the member of the Medical Board which is competent to assess the disability being suffered by any person. As the petitioner stated that she being an illiterate person used to attend to labour work, she must have suffered loss of earnings. Therefore, keeping in view, that at least for four months she must have suffered inconvenience and unable to attend to labour work, she is entitled to a sum of Rs.6,000/- (1,500 X 4) towards loss of earnings. Thus, in all, the petitioner is entitled to Rs.47,000/- [(15,000 X 2=) 30,000 + (3,000 X 2=) 6,000 + 2,000 + 3,000 + 6,000) as compensation.

13. Accordingly, the Motor Accident Civil Miscellaneous Appeal is partly allowed enhancing the compensation awarded by the Tribunal from Rs.33,000/- to Rs.47,000/- (Rupees forty-seven thousand only), which shall carry interest at 7.5% per annum from the date of O.P. till realization.

14. As a sequel, miscellaneous applications, if any, pending in this appeal shall stand disposed of.

A. SHANKAR NARAYANA, J

13th February, 2015

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