

**HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

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**M.A.C.M.A. No. 3683 of 2005**

**JUDGMENT:**

Dissatisfied with the amount of Rs.1,22,700/- granted as compensation by the order dated 29.07.2005 in M.V.O.P.No.236 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Special Judge for trial of the offences under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989-cum XX Additional Chief Judge, Secunderabad (for short, 'the Tribunal') as against the claim of Rs.4,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the injuries sustained by the 1<sup>st</sup> appellant in a road accident, the instant appeal is preferred seeking enhancement of compensation.

2. The appellants herein are the petitioners, while respondent Nos.1 and 2, who are the owner and insurer of the accident vehicle respectively, were respondents in the original petition.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 23.10.2002 at about 6-30 p.m., the petitioner, aged 12 years and prosecuting her studies in Chaitanya Grammer School on the extreme left side of the road and suddenly the driver of the car bearing registration No.AP 13F 2243 driven in a rash and negligent manner at high speed came on wrong side and dashed her, due to which, she sustained fracture to mandible at the dental roller segment, teeth in the upper jaw became loosened and she lost two maxillary tooth of lower jaw and she was shifted to B.B.R.Multi Specialty Hospital, Balanagar, Secunderabad. It is according to her, she is undergoing treatment even on the date on which the instant claim petition was filed. Therefore, she sought the aforesaid amount from the respondent Nos.1 and 2, who are owner and insurer of the car respectively.

5. Respondent No.1 has not chosen to contest the claim and remained *ex parte*. Respondent No.2 opposed the claim by raising various pleas.

6. The Tribunal, basing on the said pleadings putforth by the parties, framed the following issues about the responsibility for the accident:

"i. Whether the petitioner met with the accident due to collision between her bicycle and car bearing No.AP-13-2243 resulting into injuries to the petitioner?

ii. Whether the accident did not occur due to the rash and negligent driving of the car bearing No.AP-13-F-2243?

iii. Whether the petitioner is entitled for compensation, if so, to what extent and from whom?

iv. To what relief?"

7. During enquiry, the 2<sup>nd</sup> petitioner, who is the next friend and none other than the father of 1<sup>st</sup> petitioner-minor, examined himself as P.W.1 besides examining the Medical Officers as P.Ws.2 and 3 and one K.Jai Kumar as P.W.4 and marked Exs.A.1 to A.15; whereas, on behalf of respondent No.2-Insurance Company, no witnesses were examined and no documents were marked.

8. The Tribunal, on appraisal of evidence, both, oral and documentary, let in by the petitioners, more particularly, Exs.A.1 to A.4, which are certified copies of F.I.R., charge sheet, scene of occurrence panchanama and medico legal certificate respectively, held both issue Nos.1 and 2 in favour of the petitioners. On issue No.3, the Tribunal, basing on the evidence of doctors, examined as P.Ws.2 and 3, and Ex.A.4 medico legal certificate issued by B.B.R.Multi Specialty Hospital, Balanagar, Secunderabad and the injuries described therein, granted Rs.40,000/- towards pain and suffering, Rs.20,025/- and Rs.2,220/- towards medical expenses, Rs.5,000/- towards attendant charges, Rs.5,000/- towards extra nourishment and Rs.425/- towards transport charges, besides granting Rs.50,000/- towards restoration of lost teeth and repairing of loosened teeth to avoid disfigurement and defective in speech, etc., problems, and, thus, granted a total sum of Rs.1,22,700/- as compensation with interest at 6% per annum from the date of petition till realisation.

9. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal has not properly appreciated the evidence on record, more particularly, the evidence of P.Ws.2 and 3 and Ex.A.12 certificate issued by the doctor, which shows the details of corrective surgery to be performed,

and, therefore, sought to enhance the compensation.

10. Heard Sri C.Vikram Chandra, learned counsel for the appellants, in part on 07.04.2015, and Sri T.Ramulu, learned Standing Counsel for the 2<sup>nd</sup> respondent-Insurance Company. The appeal against the 1<sup>st</sup> respondent was dismissed for default by the order dated 06.01.2012. However, dismissal of the appeal for default against the respondent No.1-owner of the vehicle is of no consequence to decide the quantum of compensation, in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**, wherein it is held that:

"If the Claims Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged either by the Insurance Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore there cannot be any bar to decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle to the extent of the statutory liability of the Insurance Company. But the quantum of compensation cannot be decided over and above the statutory liability of the Insurance Company in the absence of the owners, but the question of the statutory liability of the Insurance Company survives for consideration at the appellate stage."

11. The short question that arises for consideration is, whether the amount awarded by the Tribunal as compensation is just and adequate?

12. The Tribunal has granted slightly more than Rs.20,000/- towards medical expenses, based on the evidence of P.W.2, Rs.40,000/- towards pain and suffering, Rs.50,000/- towards restoration of lost teeth and repairing the loosened teeth. Somehow, the Tribunal has not assigned convincing reasons in discarding the evidence of P.Ws.2 and 3, who are the relevant witnesses, P.W.2 being the Dental Surgeon and P.W.3 being Plastic Surgeon working in B.B.R.Multi Specialty Hospital, Balanagar, Secunderabad.

13. The evidence of P.W.2 Dr.B.Chandrakanth Rao, Maxillofacial Surgeon, then practicing in Mahavir Hospital and Research Centre, having put in 14 years of experience, is that he has examined the 1<sup>st</sup> petitioner and issued Ex.A.12. According to him, the 1<sup>st</sup> petitioner had maxillofacial bones, fractures with loss of

teeth of mastication and the front teeth are responsible for speech and appearance. He states that her mastication was defective and he issued Ex.A.12 for the purpose of proposed treatment as the 1<sup>st</sup> petitioner required treatment for postal traumatic maxillofacial syndrome. Ex.A.12 shows that the 1<sup>st</sup> petitioner, who sustained multiple fracture injuries in a road accident, requires corrective maxillofacial surgery for maxilla and dental implants to enable for mastication and to correct speech defect and the approximate expenditure shown therein was Rs.2,50,000/- for the whole treatment. The first component shown is Rs.50,000/- towards corrective maxillofacial surgery and the second component is Rs.1,50,000/- for dental implants and third component shown is Rs.50,000/- towards hospital expenditure. Ex.A.13- positive photographs numbering four show the fracture to the lower jaw and loosening of teeth both in the upper jaw and lower jaw. P.W.2 was cross-examined by the learned Standing Counsel for the Insurance Company, but nothing is brought out in his cross-examination to condemn his assertions in his chief-examination as to the estimation given by him in Ex.A.12 and he has bluntly denied the suggestion that to enable the 1<sup>st</sup> petitioner to get more compensation, he was speaking false, by immediately adding that only with an intention to give what was medically best to the patient in the developing medical technology he had come to depose as a witness.

14. Even the evidence of P.W.3-Dr. S.Praveen, who was Plastic Surgeon, working in B.B.R.Multi Specialty Hospital, Balanagar, Secunderabad, with M.B.B.S. and M.S. and Mch. with experience of three years in the said hospital, states that after examining the 1<sup>st</sup> petitioner, they found the injuries, viz., (i) multiple intra oral laceration; (ii) loss of teeth of upper jaw and lower jaw; (iii) dento alveolar fracture of mandible (it names fracture of the tooth bearing segment of lower jaw bone); and (iv) loose teeth with scant, soft tissue attachment (upper jaw and lower jaw). According to him, she was admitted on 23.10.2002 and discharged on 28.10.2002 and there was surgical intervention on 24.10.2002 for repair of intra oral lacerations, stabilization of loose tooth of upper jaw and stabilization of dento alveolar (insertion of steel plate) and at the time of discharge, she was referred to a Dental Surgeon/ Orthodontist for further management. He has asserted as to the medical expenses for the treatment, the 1<sup>st</sup> petitioner has paid during that period as an inpatient. No doubt, he says in his cross-examination that he has no knowledge about Ex.A.6. The other suggestions made to him were bluntly denied by him. Thus, there is also

nothing in his cross-examination to exclude his evidence in chief-examination as to the injuries sustained by the 1<sup>st</sup> petitioner and the nature of injuries and the treatment given to her in the said hospital.

15. The age of the 1<sup>st</sup> petitioner and her gender comes into picture, which are of vital significance in determining the compensation. The evidence of P.Ws.2 and 3, in clear terms, shows that there was disfiguration besides loss of mastication and speech in clarity and for the said purpose only, Ex.A.12 was issued to see that she regains both the deformities besides the facial deformity on account of the injuries to the maxillofacial region. Therefore, there cannot be any ground to ignore or reject the amount specified in Ex.A.12, which were intended for future operation. The Tribunal has granted Rs.50,000/- towards repair of loosened teeth. Therefore, the 1<sup>st</sup> petitioner is further entitled to a sum of Rs.2,00,000/- towards future surgeries. This apart, since the amounts granted towards extra nourishment, attendant and transport charges by the Tribunal at Rs.5,000/-, Rs.5,000/- and Rs.425/- respectively, are meager when compared to the sufferance the 1<sup>st</sup> petitioner has undergone which she has to suffer throughout her life, the same are enhanced to Rs.20,000/- towards extra nourishment and Rs.10,000/- towards transport and attendant charges.

16. Thus, the 1<sup>st</sup> petitioner is entitled to a total sum of Rs.3,42,245/- (Rupees three lakh forty two thousand two hundred and forty five) as against Rs.1,22,700/- granted by the Tribunal, towards compensation and the same is accordingly granted. The Tribunal granted interest at 6% per annum and the same is enhanced to 7.5% per annum on the entire amount from the date of petition till realisation, as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**.

17. Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation as well as the rate of interest, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

18. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand disposed of.

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**A. SHANKAR NARAYANA, J**

17<sup>th</sup> April, 2015

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