

HON'BLE SMT JUSTICE ANIS

M.A.C.M.A.No.2465 of 2005

J U D G M E N T:

This appeal is filed by the appellant/petitioner under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 18.10.2004, passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-VI Additional District Judge, (Fast Track Court), Nizamabad, in O.P.No.660 of 2000, awarding compensation of Rs.5,500/-.

2. The appellant/petitioner filed the above Original Petition under Section 166 of the Act read with Rule 455 of the Andhra Pradesh Motor Vehicle Rules, 1989 (for short 'the Rules'), claiming compensation of Rs.97,000/- along with future interest at 24% p.a, on account of the injuries sustained by her in a motor vehicle accident that occurred on 11.05.2000.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4. The brief averments made in the petition are that on 11.05.2000 at about 6:30 p.m, the petitioner along with others were going in an Auto bearing No.AP.25T.7911 from Bardipur to Nizamabad and on the way at Boregaon bridge, the driver of the auto drove the same in a rash and negligent manner, as a result the auto turned turtle. In the accident, the petitioner and others sustained injuries. The petitioner received fracture injuries to her right thumb, other fingers and multiple injuries all over the body. After the accident, she was admitted in the Government Head Quarters Hospital, Nizamabad and later on, shifted to Amrutha Multi Speciality Hospital, Nizamabad, where Dr.G.Haya Prakash treated her and she spent Rs.20,000/- for her treatment. Prior to the accident, petitioner was rolling beedies and was earning Rs.1,500/- p.m and that after the accident, she was unable to do any work and she sustained

permanent disability. The first respondent being the owner and second respondent being the insurer of the auto are jointly liable to pay compensation to the petitioner and prayed the Court to grant compensation of Rs.97,000/-.

5. The brief averments made in the counter filed by the first respondent are as follows:

The first respondent put the petitioner to prove the manner of accident, his age and income and specifically stated that his auto was duly insured with the second respondent vide cover note No.887048 valid from 04.12.1999 to 03.12.2000, as such he is not liable to pay any compensation to the petitioner and further, stated that on the date of accident, the vehicle was road worthy and had fitness certificate and the vehicle was being driven by driver having valid driving license and finally stated that Respondent No.2 is liable to pay compensation to the petitioner as the vehicle was duly insured with it at the time of accident and prayed the Court to dismiss the petition

6. The brief averments made in the written statement filed by the second respondent are as follows:

The second respondent put the petitioner to prove the manner of accident, his age and income and denied that the petitioner has received injuries, claimed protection under Sections 147, 149 & 170 of the Act and finally prayed the Court to dismiss the petition as the compensation claimed is high and excessive.

7. Basing on the above pleadings, the Tribunal framed two issues and to substantiate her claim, the petitioner herself examined as PW.1 and got examined PW.2, and got marked Exs.A.1 to A.12 and Ex.C1 on her behalf. On behalf of the respondents, RW.1 was examined, but no documentary evidence got marked.

8. After considering the oral and documentary evidence, the Tribunal

held that the accident occurred due to rash and negligent driving of the driver of the auto and awarded compensation of Rs.5,500/- along with interest at 9% p.a. to the petitioner payable by both the respondents and thereafter recoverable by respondent No.2 from respondent No.1.

9. Being not satisfied with the award passed by the Tribunal, the petitioner preferred the present appeal.

10. The learned counsel appearing for the appellant/petitioner argued that the Tribunal without considering the evidence on record granted meagre compensation. Further, the Tribunal also not granted any compensation for the disability suffered by the petitioner and not granted any compensation towards medical expenses, pain and sufferings and extra nourishment. It is also argued that prior to the accident the deceased was hale and healthy. Due to the accident, she was unable to do any work as she was doing beedi rolling work and was earning Rs.1,500/- p.m and prayed the Court to enhance the compensation.

11. Though notice was served on respondent No.1, none appeared to argue on his behalf.

12. On the other hand, the learned counsel appearing for the second respondent argued that the Tribunal after considering the evidence on record rightly granted compensation. Further, it is also argued that the petitioner failed to prove the disability suffered by her by producing medical records and also argued that at the time of accident, there were seventeen passengers travelling in the vehicle; that the Tribunal has not considered that aspect and the said finding needs no interference and therefore, prayed the Court to dismiss the petition.

13. Having regard to the submissions made by the learned counsel appearing for both the parties, the points which are to be decided in this appeal are as follows:

1. Whether the compensation awarded by the Tribunal is just

and reasonable?

2. Whether the appellant/petitioner is entitled for enhancement of compensation as prayed for?

14. **POINTS:** A perusal of the oral evidence of PW.1 shows that on 11.05.2000 at about 6:30 p.m, the petitioner along with others were travelling in an auto belonging to the first respondent, which was insured with the second respondent, and when the auto reached Boregaon bridge, the driver of the auto drove the vehicle in a rash and negligent manner and as such, the auto turned turtle due to which the petitioner received injuries. There is no dispute about the manner of accident as the Insurance Company has not challenged this aspect. Therefore, the findings of the Tribunal that the accident was caused due to rash and negligent driving of the auto need no interference.

15. Coming to the injuries received by the petitioner are concerned, Ex.A3 is the wound certificate issued by the Government Hospital, Nizamabad, wherein the doctor stated that the petitioner received an incised injury of 1 X 1 cms over right thumb and another incised injury on the left web 1 X 1 cms. According to the doctor, both the injuries are simple in nature. The claim of the petitioner is that after the discharge from the Government Head Quarters Hospital, she was admitted in a private hospital and there, she was treated and found fracture of proximal phalinx of right thumb and spent an amount of Rs.13,943/- towards expenses. Admittedly, in the Government Hospital, Nizamabad, there is a Medical Board, which can assess the disability of the petitioner. As per Ex.A3, there is no grievous injury to the petitioner. She received only two simple injuries. Therefore, the Tribunal after considering Ex.A3 wound certificate held that the petitioner sustained two simple injuries but has not sustained any disability. The Tribunal gave a categorical finding that Exs.A5 to A10 are created documents and Ex.C1 disability certificate cannot be relied upon as the petitioner failed

to produce any evidence regarding the disability. Therefore, the Tribunal rightly held that the petitioner is not suffering with any disability and is not entitled for any compensation under that head.

16. So far, the compensation awarded by the Tribunal to the petitioner is concerned, it is no doubt that the petitioner sustained two simple injuries to her hand and she was about three days in the Government Head Quarters Hospital, Nizamabad. During that period, she might have suffered some inconvenience on receiving those injuries. Therefore, the Tribunal rightly awarded Rs.2,000/- for two injuries, Rs.2,000/- for the medical expenses and Rs.1,500/- for the loss of earnings. The petitioner apart from taking treatment in the hospital, she might have spent some amount towards transportation, pain and sufferings, extra nourishment and other expenses. Therefore, I am of the view that the petitioner shall be awarded Rs.1,000/- towards transportation, Rs.2,000/- towards pain and sufferings and Rs.2,000/- towards extra nourishment and other charges. Thus, the petitioner is entitled for a total amount of Rs.10,500/-.

17. As far as the rate of interest is concerned, in view of the different rate of interests granted by the Hon'ble Supreme Court in the decisions reported in ***Sanobanu Nazirbhai Mirza and others v. Ahmedabad Municipal Transport Service***^[1] and ***Rebeka Minz and others v. Divisional Manager, United India Limited Insurance Company Limited and another***^[2], I am of the view that interest at 7.5% p.a shall be awarded on the enhanced amount from the date of appeal till the date of realisation.

18. In view of the above discussion, the appeal is partly allowed enhancing the compensation awarded by the Tribunal to the appellant/petitioner from Rs.5,500/- to Rs.10,500/- along with interest at 7.5% p.a on the enhanced amount from the date of appeal till the date of realisation. No order as to costs.

19. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

ANIS, J

Date: 07.07.2015

sr

[\[1\]](#) 2013 ACJ 2733

[\[2\]](#) 2012 ACJ 2328