

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.522 OF 2006

JUDGMENT:

Having got dissatisfied with the award of Rs.18,210/-(Rupees eighteen thousand two hundred and ten) granted by learned Chairman, Motor Accidents Claims Tribunal – cum – X Additional District Judge (Fast Track Court), Guntur District at Narsaraopet (for short 'the Tribunal') as against the claim of Rs.1,00,000/-(Rupees one lakh) laid under Sections 140, 141, 163A and 166 of Motor Vehicles Act, 1988 (for short 'the Act') and Rules 455 and 476 of Andhra Pradesh Motor Vehicles Rules, 1989 (for short 'the Rules'), by the order and decree, dated 16-09-2005, in M.V.O.P. No.203 of 2003, the instant appeal is preferred by the petitioner under Section 173 of the Act seeking enhancement.

2. The appellant herein is petitioner in the OP before the Tribunal, while respondent – Andhra Pradesh State Road Transport Corporation (APSRTC), owner of RTC bus bearing registration No.AP 10Z 2656, is respondent as such.

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 03-01-2003 at about 10.30 A.M., while the petitioner was travelling in an auto-rickshaw bearing registration No.AP 7U 8220, as a passenger, from Piduguralla to Brahmanapalli on left side of Guntur – Macherla road, and when it reached near Buggavagu, an RTC bus bearing registration No.AP 10Z 2656 came in opposite direction at high speed in a rash and negligent manner and hit the auto-rickshaw, due to which, the petitioner sustained grievous injuries. She was given first-aid in Government Hospital, Piduguralla and from there she was shifted to Nagarjuna Trauma and Emergency Hospital, Narsaragopet. The concerned police also registered a crime against the driver of bus. The petitioner claiming that she

was earning Rs.60/- per day as coolie, sought a sum of Rs.60,000/- for disability towards loss of earning capacity; Rs.20,000/- towards medical expenses; Rs.10,000/- towards pain and suffering and Rs.10,000/- towards loss of amenities and enjoyment and, thus, sought to grant a total sum of Rs.1,00,000/- as compensation.

5 . Respondent – APSRTC filed written statement opposing the claim and disowning the rash and negligent driving on the part of driver of bus. It is stated that the driver of auto-rickshaw negligently drove the auto-rickshaw, due to which, the accident has occurred and, therefore, the non-joinder of driver, owner and the insurer of the auto-rickshaw, the claim is bad and, finally, sought to dismiss the claim.

6 . Based on the pleadings, the Tribunal framed three issues about the responsibility for the accident. During inquiry before the Tribunal, the petitioner examined herself as PW.1, besides examining Dr. Botla Raghu Prasad as PW.2 and marked Exs.A-1 to A-9. On behalf of the respondent, one Alli Devadanam, driver of the bus, was examined as RW.1, and no documents were filed.

7. The Tribunal on overall assessment of the evidence let in by both sides and construing that the claim petition was laid under Section163-A of the Act, even finding from the evidence of RW.1 that the auto-rickshaw was proceeding on left side of the road from Piduguralla to Brahmanapalli, culling out the rash and negligent driving on the part of the driver of bus, held issue No.1 in favour of the petitioner. On issue No.2, as against the stand of petitioner that she was earning Rs.60/- per day as coolie, taken Rs.30/- as daily wage, arrived at Rs.10,800/- as annual income and applying multiplier '8' since she was 60 years old, and taking the disability basing on the evidence of PW.2 at 15% assessed by PW.2, worked out the loss of earning capacity at Rs.12,960/-, however, discarding the amount of Rs.13,410/- as per medical bills (9) in number marked as Ex.A-6, besides granting Rs.5,000/- towards medical expenses and Rs.250/- towards X-ray charges and, thus, granted a total of

Rs.18,210/- as compensation.

8. It is the aforesaid order which is sought to be modified in the instant appeal seeking enhancement on the ground that the Tribunal without any convincing reason being assigned, took the wage of the petitioner at Rs.30/- per day which ought not to have done and the Tribunal also went wrong in discarding the amount covered by Ex.A-6 bills, and that the Tribunal ought to have granted the amounts towards special diet, extra nourishment, attendant charges, transport and other incidental charges and, therefore, sought to grant balance amount.

9. Heard Sri N. Subba Rao, learned counsel for the appellant – petitioner, and Sri P. Durga Prasad, learned Standing Counsel for APSRTC.

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10. Perused the order and the evidence let in by both sides. So far as earnings of the petitioner are concerned, the Tribunal, somehow, took her wages at Rs.30/- per day, while the petitioner claimed that she was earning Rs.60/- per day as coolie. However, keeping in view, approximately, the prevailing wages of a daily coolie, it would be reasonable to fix at Rs.50/- per day, in which case, it works out to Rs.1500/- per month and Rs.18,000/- per annum. The disability taken by the Tribunal at 15% towards partial permanent in nature basing on the evidence of PW.2, since, well-reasoned, the same is confirmed.

11. So far as multiplier is concerned, the Tribunal taken it as '8', but as per the decision of the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**, relevant multiplier is '9'. When the same is applied, it works out to Rs.1,62,000/- [Rs.18,000/- x 9], and 15% thereof, works out to Rs.24,300/-. The petitioner is, therefore, entitled to Rs.24,300/- towards future loss of earning capacity.

12. So far as loss of temporary earnings are concerned, keeping in view,

the injuries sustained by the petitioner, which are fracture of both clavicles and comminuted fracture of supracondylar region of the right femur, for at least six months, she would not have been able to gain normalcy and to attend to coolie work, in which case, a sum of Rs.9,000/- is granted towards temporary loss of earnings. The Tribunal granted Rs.5,000/- towards medical expenses and the same is maintained. Towards extra nourishment, no amount is granted by the Tribunal, and it would be reasonable to grant a sum of Rs.5,000/- and, accordingly, the same is granted. Towards transport and attendant charges, a sum of Rs.5,000/- is granted. Thus, in all, the petitioner is entitled to Rs.48,300/- as compensation as against the amount of Rs.18,210/- granted by the Tribunal. Concerning interest, the Tribunal has granted it at 7.5% per annum and the same is maintained on the entire amount of Rs.48,300/- as per the decision of the Apex Court in **Rajesh and others v. Rajbir Singh and others**.

13. In the result, the appeal is allowed in part and the order and decree, dated 16-09-2005, in M.V.O.P. No.203 of 2003, passed by the Tribunal are modified, enhancing the compensation to Rs.48,300/- (Rupees forty eight thousand and three hundred) from Rs.18,210/- (Rupees eighteen thousand two hundred and ten) with interest thereon at 7.5% per annum from the date of petition till realization. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

April 09, 2015.

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