

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA Nos. 96 of 2006 and 99 of 2006

Common Judgment:

These two appeals have been preferred by the petitioners in OP Nos.7 of 2003 and 3 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-VI Additional District Judge (FTC), Anantapur, at Gooty (for short 'the Tribunal'), dissatisfied with the amounts of Rs.40,000/- and Rs.20,000/- granted by the Tribunal as against the claims of Rs.2,00,000/- and Rs.1,50,000/- respectively, laid under Sections 140 and 166 of the Motor Vehicles Act, 1988 (for short 'the Act') and under Rule 455 of the Andhra Pradesh Motor Vehicle Rules 1989, seeking enhancement of compensation.

2. Since the awards in respective OPs arise out of one and the same accident, these two appeals are taken up for disposal by way of common judgment.

3. For convenience sake, the parties hereinafter referred to as they were arrayed before the Tribunal in the Original Petitions.

4. The fact situation occurring in the instant appeals has been that on the intervening night of 18/19.12.2001, while the petitioners along with their relations were travelling in a Maruthi Suzuki Van bearing registration No.AP-02G-5859 having started from Gooty destined to Hyderabad and when it reached near Bureddipalli village at about 8.00 AM since the driver of the said Van had driven it in a rash and negligent manner unable to control the speed of the vehicle, hit the road side tree resulting the Van turning upside down, occasioning injuries to the petitioners herein besides the death of one Venkata Reddy and injuries to others. The petitioner in the former appeal was initially shifted to SVS Medical College Hospital, Mahaboobnagar and

from there to Nizams Institute of Medical Sciences, Hyderabad. She claims that she has undergone number of surgical interventions and, therefore, sought Rs.2,00,000/- as compensation from the respondents 1 and 2 who are the owner and insurer respectively. In the later appeal, the petitioner contending that he sustained deformity and swelling on middle 1/3rd of left thigh sought Rs.1,50,000/- towards compensation.

5. Before the Tribunal, the first respondent - owner of the vehicle remained *ex parte*.

6. The second respondent – Insurance Company opposed the claim raising various pleas and stating that for non-joinder of driver of the crime vehicle the claim is bad and sought to exonerate it by dismissing the claim petition.

7. The Tribunal framed three identical issues in both the OPs. During enquiry, the petitioners respectively, examined themselves as PW.1 and also examined Dr. R. Venugopal Krishna as PW.2, but in the former appeal another Dr. V. Suryaprakash Rao was examined as PW.3 and marked Exs.A1 to A7 while in the latter appeal Exs.A1 to A4 were marked. Copy of Insurance Policy was marked as Ex.B1 in both the OPs. No witnesses were examined on behalf of the second respondent – Insurance Company.

8. The Tribunal, on issue No.1, held it in affirmative basing on the evidence of the petitioners supported by Ex.A1 – certified copy of FIR and Ex.A3 – certified copy of charge sheet reflecting that the driver of the Van was shown as accused clutching the relevant offences.

9. On issue No.2 in the former appeal, the Tribunal, considering that out of four injuries the 1st and 4th injuries were grievous in nature, granted Rs.12,000/- each to two grievous injuries and Rs.3,000/- each

to two simple injuries, however, disbelieving the medical bills on the ground that they were not proved, granted Rs.5,000/- towards medical expenses and another sum of Rs.5,000/- towards pain and suffering. Thus, a total sum of Rs.40,000/- was granted. In the latter appeal, finding one grievous injury a sum of Rs.12,000/- was granted towards it, besides granting Rs.5,000/- towards medical expenses and Rs.3,000/- towards pain and suffering and, thus, a total sum of Rs.20,000/- was granted as compensation. The Tribunal also granted interest at 9% p.a., in both the OPs for the compensation awarded by it.

10. The aforesaid orders are under challenge in the instant appeals almost raising identical grounds. In the former appeal, the appellant contends that the Tribunal ought to have granted a sum of Rs.62,804/- towards medical expenses covered by Exs.A5 to A7 and also contended that granting Rs.12,000/- each towards grievous injuries was very meagre. In latter appeal, it is contended that the Tribunal ought to have granted Rs.20,000/- covered by Ex.A4, despite the fact that PW.2 proved Ex.A4 granting Rs.12,000/- towards grievous injury was very meagre. Thus, both the appellants sought to grant balance amount in their respective appeals.

11. Heard Sri S. Harinath Reddy, learned counsel for the appellants in these appeals and Smt. A. Anasuya, learned Standing Counsel for the second respondent – Insurance Company. Despite service of notice on the first respondent in these appeals, none appears.

12. Perused the order and the oral and documentary evidence let in by the petitioners respectively.

13. Concerning the claim in MACMA No.96 of 2006, the petitioner claimed a total sum of Rs.2,00,000/- for the injuries she sustained. The description of injuries as to be found in the evidence of PW.3 and

as reflected from Ex.A2 are thus:

“1. Deformity and swelling of lower 1/3rd of left thigh. X-ray shows the fracture of lower 1/3rd of left femur, the injury is grievous in nature.

2. Lacerated injury of 5 x 2 cm frontal temporal region, it is simple in nature.

3. Lacerated injury of 6 x 2 cm upper part of occipital bone, it is simple in nature.

4. Deformity of lower 1/3rd of right thigh. X-ray shows the fracture of lower 1/3rd of right femur, it is grievous in nature.”

14. Thus, the injuries 1 and 4 are grievous in nature. Both the injuries are to the left and right thighs. The other two injuries are simple in nature. As seen from the evidence on record, more particularly, the evidence of PW.3, who has spoken to about Exs.A6 and A7, in fact, Ex.A6 is the essentiality certificate showing the amount as Rs.19,622/-, but based on other bills i.e., perhaps Exs.A5 and A7. However, since the Tribunal has not granted any amount covered by Exs.A5 and A7, but granted Rs.5,000/- without assigning any reasons except observing that they were not proved despite the fact that PW.3 proved the contents of Exs.A5 and A7 and, more particularly, they relate to NIMS Hospital, certainly, the petitioner is entitled to the amounts of Rs.18,392/- covered by Ex.A5 and Rs.24,790/- covered by Ex.A7, but, however, not entitled to any amount shown in Ex.A6 in view of the fact that it is only essentiality certificate issued by the hospital to enable the petitioner to claim medical reimbursement, if any.

15. Turning to the amounts granted towards injuries, the amount of Rs.3,000/- per injury granted by the Tribunal, so far as injuries 2 and 3 which are simple in nature are concerned, the same are maintained. Concerning the grant of Rs.12,000/- each for two grievous injuries, which are injury Nos.1 and 4, certainly, the amount is on lower side. Therefore, keeping in view, the nature of injuries that being the

deformity of lower 1/3rd of left thigh and right thigh showing fracture of lower 1/3rd of femur of both the legs, the amount of Rs.12,000/- towards each is enhanced to Rs.20,000/- each.

16. The amount of Rs.5,000/- granted by the Tribunal towards pain and suffering is maintained. Towards extra nourishment and transportation charges, the Tribunal has not granted any amounts, though the petitioner is entitled. Hence, a sum of Rs.5,000/- is granted towards extra nourishment and a sum of Rs.5,000/- towards attendant and transportation charges. This apart, the petitioner claimed that she was supervising the cultivation and business and earning Rs.5,000/- per month, but no proof is forthcoming to show that she was earning Rs.5,000/- per month, as rightly contended by the learned counsel for the second respondent. However, even taking the notional income at Rs.15,000/-, which works out to Rs.1250/- per month, for a period of six months Rs.7,500/- is granted towards loss of temporary earnings. Thus, the petitioner is totally entitled to Rs.1,11,682/- (Rs.18,392/- + 24,790/- + 3,000/- + 3,000/- + 20,000/- + 20,000/- + 5,000/- + 5,000/- + 5,000/- + 7500/-). The interest granted by the Tribunal at 9% p.a., is reduced to 7.5% p.a., from the date of petition till realisation on the said amount as per the judgment of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1].

17. Turning to determination of compensation by the Tribunal under issue No.2, so far as latter appeal in MACMA No.99 of 2006, is concerned, the Tribunal has granted Rs.12,000/- for grievous injury, Rs.5,000/- towards medical expenses and Rs.3,000/- towards pain and suffering. The petitioner is entitled to Rs.20,000/- for grievous injury and as against Rs.5,000/- granted by the Tribunal towards medical expenses, the petitioner is entitled to Rs.20,000/- covered by Ex.A4 in view of the evidence of PW.2. The amount of Rs.3,000/- granted towards pain and suffering is maintained. Towards extra

nourishment a sum of Rs.5,000/- is granted and towards attendant and transportation charges a sum of Rs.5,000/- is granted. Thus, the petitioner is totally entitled to Rs.53,000/- with interest at 7.5% as per the judgment of the Hon'ble Apex Court in **Rajesh's** case (supra) as against 9% p.a., interest granted by the Tribunal.

18. Accordingly, both the appeals are allowed in part modifying the impugned awards passed by the Tribunal, by enhancing the compensation and reducing the rate of interest as stated supra. There shall be no order as to costs.

19. As a sequel thereto, Miscellaneous Applications, if any, pending in these appeals shall stand closed.

A. SHANKAR NARAYANA, J

Date: 19.03.2015

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[\[1\]](#) 2013 ACJ 1403 = 2013(4) ALT 35