

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

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M.A.C.M.A.No.825 of 2009

JUDGMENT:

This appeal is filed by the petitioner-claimant challenging the judgment and award, dated 28.03.2005 passed in O.P.No.989 of 2002 on the file of the Motor Vehicle Accident Claims Tribunal-cum-VI Additional District Judge (FTC), Nizamabad at Kamareddy, wherein the Tribunal awarded compensation of Rs.57,490/-against the claim of Rs.2,00,000/-.

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

3. The facts leading to file the present appeal, in brief, are as follows:

On 19.06.1999 the petitioner was proceeding to Beedi Colony at Kamareddy from Gandhinagar on a scooter bearing No.AAJ-7746 as a pillion-rider. When the scooter reached Kamareddy road, the driver of the RTC bus bearing No.AP-9Z-3624 had driven the same in a rash and negligent manner, came from wrong side and dashed against the scooter. Due to accident, the petitioner sustained multiple injuries on various parts of the body and took treatment in Government Hospital, Kamareddy and spent an amount of Rs.1,00,000/-. The Station House Officer, Kamareddy, registered a case in Crime No.145 of 1999 under Section 337 IPC. By the time of accident, the petitioner was aged about 28 years and used to earn Rs.6,000/- to Rs.8,000/- per month as vegetable vendor. The respondent Nos.1 and 2 are jointly and severally liable to pay the compensation to the petitioner. The petitioner filed claim petition claiming compensation of Rs.2.00 lakhs.

4. The respondents filed counter denying the material averments made in the petition *inter alia* contending that the accident occurred

due to the rash and negligent driving of the rider of the scooter and there was no negligence on the part of the RTC bus driver. The petitioner sustained simple injuries. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

5. Basing on the above pleadings, the Tribunal framed the following issues:

1. Whether the accident was the resultant outcome of the rash and negligent driving of the APSRTC bus bearing No.AAJ-7746 by its driver?
2. Whether the petitioner is entitled for any compensation? If so, to what just amount and from which of the respondents?
3. To what relief?

6. During the course of trial, on behalf of the petitioner, PWs.1 and 2 were examined and Exs.A.1 to A.33 were marked. On behalf of the respondents, no oral or documentary evidence was adduced.

7. Basing on the oral and documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the bus and allowed the petition in part by awarding a compensation of Rs.57,490/- with interest at 9% per annum from the date of petition till the date of realisation.

8. Being aggrieved by the judgment and award passed by the Tribunal, the petitioner-claimant preferred the present appeal.

9. Heard Sri Venkateswar Varanasi, the learned counsel for the petitioner-claimant and Sri N.Vasudeva Reddy, learned standing counsel for A.P.S.R.T.C.

10. Learned counsel for the petitioner-claimant submitted that the Tribunal has not considered various documents filed by the petitioner and awarded meagre amount. Learned counsel for the respondent submitted that the Tribunal has awarded just and reasonable compensation.

11. Now, the point that arises for consideration in this appeal is as follows:

Whether the Tribunal has awarded fair, just and reasonable compensation or not?

12. POINT: The Tribunal while deciding issue No.1 arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the RTC bus, the respondent-corporation did not choose to file any appeal or cross-objections challenging the finding of the Tribunal on issue No.1. Hence, the finding of the Tribunal became final. Basing on the material available on record, I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the RTC bus. As seen from the testimony of P.W.1, he sustained injuries on various parts of the body and took treatment as inpatient for long time. A perusal of Ex.A2 reveals that the petitioner sustained one grievous injury and compound fracture. As per the testimony of P.W.2 (doctor), the petitioner sustained crush injury to right forearm and compound fracture to the right wrist. A perusal of Ex.A33 also supports the version of the petitioner. The Tribunal awarded an amount of Rs.31,000/- towards pain and suffering(Rs.24,000/- towards fracture and Rs.6,000/- towards simple injuries). The Tribunal rightly considered the nature of the injuries sustained by the petitioner and awarded the above said amount towards pain and suffering. There are no grounds much less valid grounds to enhance the compensation under the head pain and suffering. The Tribunal also awarded an amount of Rs.14,490/- towards medical bills. A perusal of Exs.A3 to

A32 clearly reveals that the petitioner spent the said amount towards medicines. The amount awarded by the Tribunal towards medicines and treatment, i.e., Rs.14,490/- is just and reasonable. The Tribunal by taking into consideration the avocation of the petitioner, awarded an amount of Rs.12,000/- towards loss of earnings (4 months X 3,000/- = 12,000/-). The Tribunal has not awarded any amount under the head extra nourishment and transportation charges. Hence, I am inclined to award an amount of Rs.2,000/- towards extra nourishment and transportation charges.

13. As per the oral testimony of P.W.2, the petitioner incurred 35% disability due to stiffness of the right wrist. P.W.2 has not issued disability certificate stating that the petitioner sustained 35% disability. If really the petitioner sustained disability, what prevented her from obtaining medical certificate from the medical board. In the absence of disability certificate, it is not safe to place reliance on the oral testimony of the claimants. Basing on the material available on record, I have no hesitation to hold that the petitioner miserably failed to prove that she incurred permanent disability, thereby lost her future earning capacity. As seen from the testimony of P.W.2, the petitioner sustained stiffness to right wrist. Due to stiffness to the right wrist, the petitioner may not enjoy her life like others. The petitioner was aged about 28 years by the time of accident. Taking into consideration the age of the petitioner I am inclined to award an amount of Rs.8,000/- towards loss of future amenities. The compensation awarded under various heads is as follows:

Pain and suffering	: Rs.31,000/-
Loss of earnings	: Rs.12,000/-
Medical bills	: Rs.14,490/-
Extra nourishment and transportation Charges	: Rs. 2,000/-
Loss of Future amenities	: Rs. 8,000/-

14. The petitioner is also entitled for interest at 7.5% per annum from the date of petition till the date of realisation on the enhanced amount of compensation. The respondents 1 and 2 have to pay the said amount.

15. Accordingly, M.A.C.M.A. is partly allowed enhancing the compensation from Rs.57,490/- to Rs.67,490/- with interest at 7.5% per annum from the date of petition till the date of realisation on the enhanced amount of compensation. No costs.

15. Consequently, miscellaneous petitions pending if any in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J

16th February, 2015
Rns