

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD**

**FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

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**M.A. C.M.A. No.1359 of 2005**

Between:

Shaik Beehulu

... Appellant

and

Sri Marri Perireddy and two others.

... Respondent (s)

DATE OF JUDGMENT PRONOUNCED: **16<sup>th</sup> July 2015**

**SUBMITTED FOR APPROVAL:**

**THE HON'BLE SMT JUSTICE ANIS**

- 1 Whether Reporters of Local newspapers may be Yes/No allowed to see the Judgments?
- 2 Whether the copies of judgment may be marked Yes/No to Law Reports/Journals
- 3 Whether Their Ladyship/Lordship wish to see the Yes/No fair copy of the Judgment?

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**The HON'BLE SMT JUSTICE ANIS**

**M.A. C.M.A. No.1359 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 Judgment and

Decree dated 01.02.2005, passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum- V Additional District Judge, Guntur in M.V.O.P.No.971 of 2001, awarding compensation of Rs.17,250/-.

2. The appellant/petitioner filed the above O.P under Section 163-A of the Act, claiming compensation of Rs.81,000/- for the injuries sustained by the petitioner in a motor vehicle accident, that occurred on 07.06.2001.

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 07.06.2001 petitioner along with other coolies was travelling in the Tractor and Trailer bearing No.AP 7L 2170 and AP 7L 2171 after loading quarry stones in the Trailer, and when they reached near Lachmallapadu cross road of Macherla-Sirigiripadu road, the driver of the said Tractor drove it in a rash and negligent manner at a high speed, as a result, the Trailer fell down and the petitioner sustained fracture of right ankle. The police Veldurthi registered a case in Cr.No.35 of 2001 against the driver of the Tractor. Immediately, the petitioner was removed to Government Hospital, Guntur where she was treated as inpatient from 08.06.2001 to 11.06.2001. Petitioner suffered pain and suffering and also lost her amenities and enjoyment of life due to the injuries and spent Rs.500/- for transport, Rs.500/- for medicines, attendant and special diet. He further stated that she was aged about 40 yrs at the time of accident and used to do coolie work and earning Rs.3,000/- per month, but on account of the accident, she lost her earnings. Therefore, the petitioner prayed the Court to grant compensation.

5. The Respondent No.1 remained ex-parte.

6. The brief averments made in the written statement filed by the 2<sup>nd</sup>

respondent are as follows :

The 2<sup>nd</sup> respondent denied the allegations made in the claim petition. He further submitted that petitioner was travelling in the Tractor of the Tractor in question as loading and unloading coolie and he along with other coolies loaded the Tractor with quarry stones at quarry near Machamallapadu village in Veldurthi Mandal and when she was travelling in the said Tractor to reach Mettameedapalli village to unload the stones, the accident occurred. He denied that the petitioner was getting Rs.3,000/- per month and stated that she was paid Rs.50/- per day. He also stated that the claim made by the petitioner is high and excessive and even if any amount is payable, 3<sup>rd</sup> respondent is liable to pay the compensation as the Tractor and Tractor was insured with the 3<sup>rd</sup> respondent.

7. The brief averments made in the written statement filed by the 3<sup>rd</sup> respondent are as follows :

The 3<sup>rd</sup> respondent put the petitioner to prove the manner of the accident, the age and income of the petitioner and stated that the accident took place due to gross negligence of the driver of the Tractor and Tractor bearing Nos.AP 7L 2170 and AP 7L 2171. Further, it is stated that the accident has not been reported by the owner of the auto in collusion with the petitioner. The 3<sup>rd</sup> Respondent also stated that the driver of the Tractor and Tractor is not having valid driving licence to drive the said vehicle at the time of accident and that the auto was not insured with the 3<sup>rd</sup> respondent as on the date of accident and there was no valid insurance policy. It is finally stated that the compensation claimed by the petitioner is high and excessive.

8. Basing on the above pleadings, the Tribunal framed three issues and to substantiate the claim, the petitioner got examined herself as P.W.1 and got examined another witness as P.W.2 and got marked Exs.A1 to A5. On behalf of the respondents RW1 was examined and Exs.B1 to B4 were marked.

9. 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 Tractor and Trailer bearing No.AP 7L 2170 and AP 7I 2171, resulting the injuries to the petitioner and awarded compensation of Rs.17,250/- along with interest at 9% p.a to the petitioner payable by respondents 1 and 2 alone, exonerating the 3<sup>rd</sup> respondent from liability.

10. Being not satisfied with the compensation awarded by the Tribunal, the petitioner preferred the present appeal.

11. The learned counsel appearing for the appellant/ petitioner argued that the Tribunal erred in holding that 3<sup>rd</sup> respondent is not liable to pay compensation in the absence of any plea by the 3<sup>rd</sup> respondent that the insured has violated the terms and condition of the policy. It is further contended that the Tribunal awarded the meagre amounts without considering the evidence on record and it failed to notice that petitioner sustained one grievous injury and one simple injury and due to the said injuries, petitioner was admitted in Government Hospital and there she was treated for four days as inpatient. The Tribunal has not awarded any compensation towards pain and sufferance, extra nourishment, transportation charges and medical bills. Hence, prayed the Court to enhance the compensation holding that all the respondents are jointly and severally liable to pay the entire compensation.

12. Notice to the respondents served. There is no representation on their behalf.

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

1. Whether the appellant is entitled for enhancement of compensation as prayed for?

2. Whether the compensation awarded by the Tribunal is just

and reasonable?

14. **POINTS 1 & 2:** A perusal of the evidence of PW1 coupled with the documentary evidence under Ex.A1 copy of FIR and Ex.A2 copy of charge sheet clearly prove that the accident occurred due to the rash and negligent driving of the driver of Tractor and Trailer bearing No.AP 7L 2170 and AP 7I 2171 and violated the terms of the policy. Thereby, the Tribunal holding the 3<sup>rd</sup> respondent not liable to pay compensation needs no interference.

15. Coming to the quantum of compensation awarded by the Tribunal is concerned, perusal of the evidence of PWs.1 and 2 show that after the accident, petitioner/injured was taken to Government Hospital, Guntur, where PW2 treated PW1. According to PW2, PW1 received one grievous injury and one simple injury. He further stated that she is suffering with 15 disability. The Tribunal by taking into consideration the injuries received by the petitioner awarded Rs.6,000/- for the said injuries and Rs.11,250/- towards disability.

16. Admittedly, in the accident that occurred on 07.06.2001 involving Tractor and Trailer bearing No.AP 7L 2170 and AP 7I 2171, petitioner sustained one grievous injury and one simple injury and she was admitted in Government hospital on 08.06.2011 and discharged on 11.06.2001, which clearly show that petitioner was treated in Government hospital conservatively for four days. During the period of treatment and thereafter also the petitioner must have suffered pain inconvenience due to the said injuries and after discharge also she must not have worked for some time. The Tribunal has not considered the factum of petitioner suffering pain and sufferance due to the injuries suffered by her. Even for transportation, medicines and extra nourishment petitioner must have incurred some expenditure, for which the Tribunal has not granted any amounts.

17. Considering all the above, petitioner is entitled for Rs.5,000/- towards pain and sufferance on account of one grievous injury and one simple injury. She is also entitled for Rs.3,000/- towards extra nourishment, Rs.2,000/- towards transportation. It is no doubt true that treatment at Government Hospital is at

free of cost, but for medicines she must have incurred some amounts. Therefore, petitioner is entitled for Rs.500/- towards medicines and a further sum of Rs.2,000/- towards attendant charges and other miscellaneous expenditure. Thus the petitioner is entitled for the enhanced compensation of Rs.12,500/- and respondents 1 and 2 are jointly and severally liable to pay the compensation awarded to the petitioner.

18. Admittedly, the Tribunal has granted the rate of interest to the petitioner at 9% p.a, against the settled principles of law.

19. In ***Sanobanu Nazirbhai Mirza and others v. Ahmedabad Municipal Transport Service***, the Hon'ble Supreme Court awarded interest @ 7.5% p.a. In ***Rebeka Minz and others v. Divisional Manager, United India Limited Insurance Company Limited and another***, the Hon'ble Supreme Court awarded interest at 7% p.a. Thus, in view of the different rate of interests granted by the Apex Court in the judgments cited above, I am of the considered view that the rate of interest awarded by the Tribunal is excessive and therefore, it is a fit case to reduce the rate of interest from 9% to 7.5% p.a. only on the enhanced amount.

20. In the result, the Appeal is allowed in part, enhancing the compensation awarded by the Tribunal to the petitioner from Rs.17,250/- to Rs.29,750/- payable by respondents 1 and 2 alone, and on the enhancement amount of Rs.12,500/-, an interest @ 7.5% p.a. is awarded from the date of appeal till the date of realisation. On deposit of the said amount, the appellant/petitioner is permitted to withdraw the amount. No order as to costs.

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

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**ANIS, J.**

Date: 16.07.2015

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