

THE HON'BLE SMT. JUSTICE ANIS

M.A.C.M.A. No. 2452 OF 2005

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JUDGMENT:

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 24.01.2005 passed by the Motor Accidents Claims Tribunal-cum-V Additional District Judge (Fast Track Court), Anantapur, in O.P.No.99 of 2001, awarding compensation of Rs.27,000/-.

2. The claimant filed the above O.P under Section 166 of the Act, claiming compensation of Rs.50,000/- on account of the injuries sustained by her in a motor vehicle accident.

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

4. The brief averments made in the petition are as follows:

On 10.03.2000, the petitioner left her village on her personal work in a D.B. cart of one Nagaraj of her village to go to Anantapur. While returning to their village after completion of work, when the D.B. cart reached near Somaladoddi village at about 9.00 p.m., one mini lorry bearing No.AP12U 1041 driven by its driver drove it in a rash and negligent manner and dashed the D.B. cart from the rear side, as a result the petitioner sustained bleeding injuries. Immediately, the petitioner was shifted to the Government General Hospital, Anantapur for treatment. On receiving the information, a case in Crime No.28 of 2000 was registered by the Anantapur Rural police against the driver of mini lorry.

The petitioner stated that she was hale and healthy, aged about 60 years and earning Rs.3,000/- per month by way of coolie work at the time of accident. Due to the accident, the petitioner got permanently disabled and was not able to live a normal life.

It is further stated that the accident was caused due to rash and negligent driving of the driver of the mini lorry. Therefore, the first respondent being the owner and the second respondent being the insurer of the mini lorry, are jointly and severally liable to pay compensation to the petitioner.

5. The first respondent remained *ex parte* before the Tribunal.

6. The brief averments made in the counter filed by the second respondent before the Tribunal are as follows:

The respondent put the petitioner to prove the manner of accident, age and income of the petitioner and also denied that the driver of the mini lorry drove the vehicle in a rash and negligent manner and hit the D.B. cart. The respondent also denied that the petitioner sustained grievous injuries, but stated that there is no evidence on record to prove that the petitioner sustained disability. The respondent put the petitioner to strict proof of the driving licence, valid permit and fitness certificate of the crime vehicle. The respondent finally stated the compensation claimed by the petitioner is high and excessive, and prayed the Court to dismiss the petition.

7. Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim, the petitioner herself examined as PW1 and got marked Exs.A.1 to A.3. On behalf of the second respondent, RW1 was examined and got marked Exs.B.1 to B.3.

8. Basing on the oral and documentary evidence, the Tribunal

held that the accident was caused due to rash and negligent driving of the mini lorry bearing No.AP12U 1041 and awarded compensation of Rs.27,000/- along with 9% interest.

9. Not satisfied with the award passed by the Tribunal, the appellant/petitioner preferred the present appeal.

10. The learned counsel for the appellant/petitioner argued that due to the accident, the petitioner lost her earnings and she was in hospital for a considerable period. It is further argued that the Tribunal has not granted any compensation towards extra nourishment and the doctor, who was working in the Government hospital, advised the petitioner to take rest for about three months, and finally, prayed the Court to enhance the compensation.

11. On the other hand, the learned counsel for the second respondent argued that the Tribunal granted reasonable compensation after considering the evidence on record; that the petitioner was a 60 year old lady at the time of accident and therefore question of loss of her earnings due to accident does not arise; that the petitioner has not filed any documentary proof to prove the disability, and finally, prayed the Court to dismiss the appeal.

12. Having regard to the submissions made by both the learned counsel, the points that arise for consideration are:

1. Whether the appellant/petitioner is entitled for enhancement of compensation?
2. Whether the compensation awarded by the Tribunal is just and reasonable?

13. **Points:**

As per the evidence produced by the appellant/ petitioner,

there is no dispute that the accident occurred due to rash and negligent driving of the driver of the mini lorry bearing No.AP12U 1041.

14. Insofar as quantum of compensation is concerned, the Tribunal awarded Rs.10,000/- for one grievous injury and Rs.2,000/- for two simple injuries. As per the rules in vogue, the Tribunal rightly awarded compensation to the respective injuries sustained by the petitioner.

15. The Tribunal also awarded Rs.10,000/- towards pain and suffering and the said finding needs no interference as the said compensation is just and reasonable.

16. Further, the Tribunal liberally awarded a sum of Rs.5,000/- towards medical expenses though the petitioner has not filed any documentary evidence and she took treatment in the Government hospital for free of cost. Therefore, the petitioner is not entitled for any enhancement of compensation under the said head.

17. The only contention of the appellant/petitioner is that she suffered one grievous injury and the Tribunal has not awarded compensation for extra nourishment, and prayed the Court to enhance the compensation. Admittedly, a perusal of the record shows that PW1 is an old lady aged 60 years and met with an accident and thereby she received one grievous injury and two simple injuries, but the Tribunal has not granted any amount towards extra nourishment. It is no doubt, for the injuries sustained by the petitioner, she has to take some extra nourishment and she must have spent some amount towards transportation charges. Therefore, considering the said facts, the petitioner is entitled for Rs.3,000/- towards extra nourishment and Rs.2,000/- towards transportation charges. Thus, the appellant/

petitioner is entitled for Rs.32,000/- instead of Rs.27,000/- as awarded by the Tribunal.

18. Therefore, in view of the above discussion, the compensation awarded by the Tribunal is enhanced from Rs.27,000/- to Rs.32,000/- and on the enhanced amount of Rs.5,000/-, an interest @ 7.5% p.a. is awarded in view of the judgment of the Hon'ble Supreme Court in *Sarla Verma and others Vs. Delhi Transport Corporation and another* ^[1] from the date of appeal till the date of realisation.

19. Accordingly, the appeal is partly allowed. No order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

(ANIS, J)

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Anr

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[\[1\]](#) (2009)6 SCC 121