

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No.266 OF 2005

JUDGMENT:

The petitioner, having got dissatisfied with the award of Rs.1,00,000/- for the injuries sustained by her in a road accident occurred on 23.09.1999, who was 12 years old and studying 4th class at the relevant time, granted as compensation in M.V.O.P.No.1148 of 1999 on 14.10.2004 by the Chairman, Motor Accidents Claims Tribunal-cum- I Additional District, Guntur (for short "Tribunal"), against the claim of Rs.1,30,000/- with interest at 6% per annum laid under Section 166 of the Motor Vehicles Act, 1988, and the rules framed thereunder, preferred the present appeal.

2. The appellant herein is the petitioner, while respondents 1 and 2 herein, who are owner of the Jeep bearing No. ADC 1724 and the insurer of the jeep, are respondents 1 and 2 respectively in O.P before the Tribunal.

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

4. The facts in brief, are that on 23.09.1999 at about 09.00 A.M, when the petitioner was going on cycle on the left side of the road to reach her school and when she reached near the temple of Lord Kanyaka Parameswari, a jeep bearing No.ADC 1724 driven at high speed in a rash and negligent manner dashed her from behind due to which she sustained crush injury to her right leg resulting in permanent disability. She was treated in a private nursing home at Piduguralla and then she was shifted to Government General Hospital, Guntur, where POP was applied and she has been limping due to shortening of her right leg. The Station House Officer, Piduguralla Police Station, registered a case in Crime No.311 of 1999. The petitioner therefore,

claimed compensation of Rs.1,30,000/-, making respondents 1 and 2 jointly and severally liable to pay compensation.

5 . Respondent No.1 remained ex-parte before the Tribunal. The 2nd respondent opposed the claim contending that the driver of the jeep did not possess valid driving licence at the time of driving the vehicle and that the jeep of the 1st respondent was not insured with it. Hence, the insurer sought to dismiss the claim of the petitioner.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry before the Tribunal, on behalf of the petitioner, her father was examined as PW.1, the doctors, who treated the petitioner were examined as PWs.2 and 3 and marked Exs.A1 to A.5 and Exs.X1 and X2 to prove her claim as regards her entitlement for compensation. On behalf of the respondents, none was examined, but Ex.B.1-copy of insurance policy was marked.

7. On appraisal of evidence, both, oral and documentary let in by the petitioner, the Tribunal held issue No.1 in favour of the petitioner, having found that only due to rash and negligent driving of the driver of the vehicle, accident occurred.

8. On issue No.2, as to quantum of compensation, the Tribunal having considered the evidence of PWs.2 and 3, who stated that the injured sustained 45% disability, that there was disfiguration to the entire body and that there was no possibility of growing up of the leg due to loss of tissues and muscles even though, the baby was growing, and treating injuries as grievous, granted a sum of Rs.1,00,000/- towards pain and suffering, permanent disability, loss of enjoyment in life, medical expenses etc. with interest at 6% per annum and directed

respondents 1 and 2 being owner and the insurer of the vehicle jointly and severally liable to pay the compensation.

9. Being aggrieved by the compensation granted by the Tribunal, the petitioner preferred the instant appeal contending that the Tribunal did not properly view the injuries sustained by the petitioner, though she sustained grievous injuries and disfiguration which led to partial permanent disability and, therefore, sought to grant balance amount.

10. Heard Sri N.Subba Rao, learned counsel for the petitioner-appellant and Sri M.Jeevan Reddy, learned counsel for respondent No.2 – insurance company.

11. Since orders of this Court dated 04.01.2012 are not complied with by the petitioner, the appeal against respondent No.1 was dismissed for default. However, the same is of no consequence to decide the quantum of compensation, in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others** wherein it is held that:

“If the claims Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged either by the Insurance Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore, there cannot be any bar to decide the quantum of compensation against the Insurance Company even in the absence of owner of the vehicle to the extent of the statutory liability of the Insurance. But the quantum of compensation cannot be decided over and above the statutory liability of the Insurance Company in the absence of the owners, but the question of the statutory liability of the Insurance Company survives for consideration at the appellate stage.”

12. On perusal of order under challenge and the evidence on record, it is clear that the petitioner sustained crush injury. As per the evidence of PWs.2 and 3, who are doctors, the wounds were healed with gross contraction of right

lower limb with loss of muscles surrounding knee joint and there was no movement at the knee joint and the loss of physical function is about 45% and that the petitioner cannot walk without crutches and that the disability sustained by the petitioner is permanent in nature through out her life and there was loss of muscles during the grown up period and shortening of her right lower limb. Therefore, the Tribunal granted Rs.1,00,000/- which appears to be on lower side. As such, Rs.1,30,000/- is granted in this appeal, which is just and reasonable compensation.

13. Concerning interest, the Tribunal granted interest at 6% which is on lower side. The petitioner is entitled to interest at 7.5% per annum on the compensation amount, from the date of petition till realisation, as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others.**

14. Accordingly, the Appeal is allowed modifying the award and decree by enhancing the compensation as well as interest as stated supra. There shall be no order as to costs.

15. As a sequel, Miscellaneous Applications, if any, pending shall stand disposed of.

A. SHANKAR NARAYANA, J

February 13, 2015.

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HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No.266 OF 2005

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DATE: 13.02.2015

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