

HON'BLE SMT. JUSTICE ANIS

MACMA No.1203 of 2005

JUDGMENT:

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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 08.04.2005, passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-V Additional District Judge, Vijayawada, in MVOP No.12 of 2002, awarding compensation of Rs.1,65,000/-.

2. The appellant/petitioner filed the above MVOP under Section 166 of the Act, claiming compensation of Rs.3,00,000/-, on account of the injuries sustained by her in a motor vehicle accident.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the MVOP.

4. The brief averments made in the petition are that on 10.07.2001 while the petitioner was going to school on Kannakall Cross Road, near Drivers Colony at Uravakonda, the driver of the lorry bearing No.AP-21-T-9254 came in a rash and negligent manner without blowing horn and dashed the petitioner, due to which she received grievous injuries such as fractures to her left leg and pelvic bone and other parts of the body. Initially, she was admitted in the Community Hospital at Uravakonda and later she was shifted to St. Joseph's General Hospital, Guntur for better treatment. A case was registered in Crime No.51 of 2001 at Uravakonda Police Station. It is further stated that due to the said injuries, the petitioner suffered scars on her left thigh and disfiguration and she spent a sum of Rs.50,000/- for treatment,

apart from other expenses like extra nourishment, transport and attendant charges. Therefore, she prayed the Tribunal to grant compensation of Rs.3,00,000/-.

5. Before the Tribunal, the first respondent remained *ex parte*.

6. The brief averments made in the counter filed by the second respondent-Insurance Company are as follows:

The second respondent put the petitioner to prove the manner of accident and age of the petitioner and denied that the driver of the crime vehicle was rash and negligent while driving the vehicle. It is further stated that injuries received by the petitioner are not serious and she did not spent Rs.50,000/- towards medical treatment. The driver of the lorry did not have valid driving licence on the date of accident and finally prayed the Tribunal to dismiss the petition.

7. Basing on the above pleadings, the Tribunal framed three issues and to substantiate the claim, the petitioner got examined PWs.1 to 3 and got marked Exs.A.1 to A.12 on her behalf. On behalf of the second respondent, no oral or documentary evidence was adduced.

8. After considering the oral and documentary evidence, the Tribunal having held that the accident was caused due to rash and negligent driving of the driver of lorry bearing No.AP-21-T-9254, awarded compensation of Rs.1,65,000/- along with interest at 9% per annum against both the respondents.

9. Being not satisfied with the award passed by the Tribunal, the petitioner preferred the present appeal.

10. The learned counsel appearing for the appellant/petitioner argued that in the accident the petitioner sustained grievous as well as simple injuries and she was treated at St. Joseph's Hospital, Guntur for the period from 14.07.2001 to 09.08.2001 and thereafter, she was shifted to NIMs, Hyderabad and later at Dr. Janardhanreddy, Govt. Homeo Doctor. The same was admitted by PW.2 and one Dr. Janardhanreddy. PW.1, father of the injured stated that he spent Rs.85,000/- towards medicines and filed medical bills and also certificates issued by various doctors. The learned counsel also argued that Dr. Nagarjuna, plastic surgeon, attended for skin grafting to the petitioner and her thigh muscles were removed at the time of debridement and consequently, the muscle tissues were lost permanently and as such there would be difference between two limbs. It is also argued that there was keyloid formation on the other thigh on account of the removal of skin for skin grafting and it needs cosmetic treatment. The learned counsel also argued that the Tribunal without considering all these facts has not granted compensation for extra nourishment, transport and attendant charges. Further, the Tribunal has also not awarded compensation for cosmetic treatment and finally prayed the Tribunal to enhance the compensation as granted by the Tribunal.

11. On the other hand, the learned standing counsel appearing for the second respondent-insurance company argued that the Tribunal after considering the oral and documentary evidence passed the award by granting just and reasonable compensation and that the said finding needs no interference and prayed this Court to dismiss the appeal.

12. Having regard to the submissions made by the learned

counsel appearing for both the parties, the points which are to be decided in this appeal are as follows:

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

13. **POINTS:** After perusing the oral and documentary evidence, there is no dispute about the fact that the accident was caused due to rash and negligent driving of the driver of the lorry bearing No.AP-T-9254.

14. So far as the quantum of compensation is concerned, it is stated that in the accident the petitioner sustained grievous as well as simple injuries. She took treatment at St. Joseph's Hospital, Guntur and also in various other hospitals. PW.2 and one Dr. Janardhan Reddy treated her and issued medical certificates. The Tribunal after considering the medical bills filed by the petitioner awarded compensation of Rs.84,769/- towards medical expenses.

The Tribunal also awarded Rs.40,000/- towards pain and suffering. However, the Tribunal has not awarded compensation for grievous injuries as contended by the learned counsel for the appellant. Admittedly, at the time of accident, the petitioner's age was about 5 years and now her age is 19 years.

15. A perusal of the evidence of PW.2 would show that one Dr. Nagarjuna, plastic surgeon also attended on her for skin grafting and that the thigh muscles were removed at the time of debridement and the muscle tissues were lost permanently and therefore, there would be difference between the two limbs. There was keyloid formation on the other thigh on account of the removal of the skin for skin grafting and it needs cosmetic treatment. The

learned counsel for the appellant submits that for the reason of disfigurement, the chances of her marriage are affected and therefore, prayed for grant of compensation towards future cosmetic treatment to the petitioner.

16. Though Dr. Nagarjuna, plastic surgeon attended for skin grafting to the petitioner, he was not examined to prove the above facts. The fact remains that in the accident the petitioner sustained grievous injuries and she underwent operations. A perusal of Ex.A.4-photos would show the injuries received by the petitioner to her two limbs. Therefore, the petitioner is entitled for some compensation for future cosmetic treatment, as she is a girl of 19 years old now.

17. Considering the facts and circumstances of the case, the petitioner is entitled for Rs.20,000/- towards grievous injuries, Rs.10,000/- towards extra nourishment, Rs.5,000/- towards transport charges and Rs.2,000/- towards attendant charges. Further, the petitioner no doubt needs some treatment to remove her disfigurement to her limbs and as per the evidence of plastic surgeon, who attended the skin grafting on the petitioner, the muscle tissues were lost permanently. Considering all these facts, the petitioner is entitled for Rs.25,000/- towards future cosmetic treatment. Therefore, in total an amount of Rs.62,000/- shall be awarded to the petitioner under the above heads, apart from the earlier compensation of Rs.1,65,000/- awarded by the Tribunal. Thus, the appellant is entitled for a total compensation amount of Rs.2,27,000/-.

18. The learned counsel for the second respondent-insurance company argued that the Tribunal granted interest at 9% per annum on the awarded compensation amount and in view of

Sarla Verma and others V. Delhi Transport Corporation and

another^[1], it has to be reduced to 7.5% per annum on the enhanced compensation amount.

19. In view of the above discussion, the appeal is partly allowed enhancing the compensation awarded by the Tribunal to the appellant from Rs.1,65,000/- to Rs.2,27,000/- with interest at the rate of 7.5% per annum on the enhanced compensation of Rs.62,000/- from the date of filing this appeal till the date of payment. However, there shall be no order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

ANIS, J

Date: 03.07.2015
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^[1] (2009) 6 SCC 121