

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

-

M.A.C.M.A. No.919 of 2005

JUDGMENT:

Dissatisfied with the amount of Rs.12,000/- granted as compensation by the order dated 06.12.2004 in M.V.O.P. No.1023 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge, Guntur (for short, 'the Tribunal') as against the claim of Rs.1,00,000/- laid under Sections 163-A and 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the injuries sustained by the petitioner in a road accident, the instant appeal is preferred under Section 173 of the Act, seeking enhancement of compensation.

2. The appellant herein is the petitioner (a minor, represented by her father), while the respondent herein, the Andhra Pradesh State Road Transport Corporation, represented by its Managing Director, Hyderabad (for short, 'Corporation'), is the respondent respectively, in the original petition.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts in brief are that on 30.06.2001 at about 12-00 noon, while the petitioner was proceeding on the left side road margin to return to her house located in Kukkalavaripalem village, Bapatla Mandal, an RTC bus bearing registration No.AP 9Z 2829 coming from Chirala and proceeding towards Bapatla driven in a rash and negligent manner at high speed dashed the petitioner, due to which, right foot of the petitioner was crushed under one of the wheels of the bus and she was immediately shifted to Government Hospital, Bapatla, where she was given first aid and later, she was admitted in Government General Hospital, Guntur, and her right great toe was

amputated and skin grafting was done. Claiming that she has studied third class at the relevant time and she became permanently disabled on account of the said injury, sought a total sum of Rs.1,00,000/- as compensation, also mentioning that Bapatla Rural Police, registered a case in Crime No.46 of 2001 against the driver of the RTC bus for the offence punishable under Section 338 IPC.

5. Respondent opposed the claim by raising various pleas.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner examined her father as P.W.1, as she was a minor and filed the claim through her father, and also examined one Bhuvanasi Naraiah, an eyewitness to the accident, as P.W.2 and marked Exs.A.1 to A.3 to substantiate her claim; whereas, on behalf of the respondent, driver of the RTC bus was examined as R.W.1 and no documents were marked.

7. The Tribunal, on appraisal of evidence, both, oral and documentary, let in by the parties, held issue Nos.1 and 2 in favour of the petitioner rejecting the evidence of R.W.1 and holding that only due to rash and negligent driving of the driver of the RTC bus, the accident had occurred. On issue No.3, the Tribunal, basing on Ex.A.2-medical certificate issued by the Civil Assistant Surgeon, Guntur, granted Rs.6,000/- so far as injury No.1 is concerned, which is grievous in nature; Rs.1,500/- towards injury No.2, which is simple in nature; Rs.500/- towards medical expenses; Rs.1,000/- towards pain and suffering; Rs.1,000/- towards loss of study; and Rs.2,000/- towards loss of future income; and thus, granted a total sum of Rs.12,000/- with interest at 9% per annum from the date of petition till the date of deposit.

8. It is the aforesaid order which is under challenge in the instant appeal preferred by the petitioner seeking enhancement of compensation contending in the grounds that the Tribunal has not properly appreciated the evidence on record and, somehow, overlooked the fact that the provisions of the Act are for the welfare

and the Act is a beneficial legislation and the Tribunal ought to have granted compensation basing on the nature of injuries sustained by the petitioner shown in Ex.A.2-medical certificate, despite the fact that the petitioner sustained amputation of right toe and skin grafting was done to her right foot, and, therefore, sought to enhance the compensation.

9. Heard Sri B. Parameswara Rao, learned counsel for the appellant-petitioner, and Sri P. Durga Prasad, learned Standing Counsel for the respondent.

10. Perused the order under challenge and the evidence both, oral and documentary, let in by the parties. The Tribunal, somehow, went wrong in not properly examining the medical certificate issued by the Civil Assistant Surgeon, Area Hospital, Bapatla, Guntur District. It reflects as many as 11 injuries totally, which are thus:

"(i) A crush injury of the right medial side of the leg measuring 10" x 5". Exposing muscles, bones, tendons. Fresh bleeding from the injury present.

- i. An abrasion on the right medial side of lower tibia measuring 4" x 3" red in colour.
- ii. Abrasions on the dorsal side of left fingers, one on second toe measuring 1" x 1/2" red in colour, second on the dorsal side of third toe 1/2" x 1/2" red in colour.
- iii. An abrasion on dorsum of left foot 2" x 2" circular red in colour.
- iv. An abrasion on the right medial knee joint measuring 1/2" x 1/4" red in colour.
- v. An abrasion on the right anterior thigh 1/4" x 1/4" red in colour.
- vi. A lacerated injury on the left temporal region above the left ear measuring 1/2" x 1/4" red in colour.
- vii. An abrasion on the left parietal region of head measuring 4" x 4" red in colour.
- viii. An abrasion on the left lateral elbow, oblique measuring 3" x 1/2" red in colour.
- ix. Multiple abrasions on the left dorsum of hand measuring 1/4" x

1/4", 1/4" x 1/4", 1/2" x 1/4" red in colour.

x. An abrasion on left lateral knee joint 1/2" x 1/2" red in colour."

11. The Tribunal also recorded a finding in paragraph No.9 of the order, while referring to the evidence of P.W.1, that the right toe of the petitioner was amputated. The petitioner had undergone surgical intervention including the external grafting. In such an event, granting Rs.6,000/- for grievous injury, which is injury No.1, is improper and, thus, the same is enhanced to Rs.15,000/-. The rest of the injuries numbering ten are simple in nature. As seen from the description of the injuries mentioned above, Rs.2,000/- is granted for each simple injury. Thus, the petitioner is entitled to Rs.20,000/- for ten simple injuries. The petitioner is also entitled to a sum of Rs.10,000/- as against Rs.1,000/- granted by the Tribunal towards pain and suffering, since she would have been immobilized for some time as seen from the finding recorded by the Tribunal. The other amounts of Rs.500/- towards medical expenses, Rs.1,000/- towards loss of study and Rs.2,000/- towards loss of future income granted by the Tribunal are not disturbed.

12. Thus, the petitioner is entitled to a total sum of Rs.48,500/- (Rupees forty eight thousand and five hundred) as against Rs.12,000/- granted by the Tribunal, towards compensation and the same is accordingly granted. The Tribunal granted interest at 9% per annum, but the same is reduced to 7.5% per annum on the entire amount from the date of petition till realisation, in view of the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**.

13. Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation and reducing the rate of interest, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

14. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand disposed of.

A. SHANKAR NARAYANA, J

27th October, 2015

siva