

THE HON'BLE SMT JUSTICE ANIS

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MACMA.NO.1527 OF 2005

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JUDGMENT:

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1) 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 04.04.2005 passed by the Motor Vehicle Accident Claims Tribunal-cum-District Judge, Visakhapatnam, in M.O.P.No.897 of 2004 awarding compensation of Rs.2,00,000/-.

2) The appellant herein filed the above said M.O.P. under Section 166 of the Act, claiming compensation of Rs.4,00,000/- on account of the injuries sustained by her in a motor vehicle accident that occurred on 04.06.2004.

3) For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the said M.O.P.

4) The brief averments of the petition are that on 04.06.2004 during the early hours, the petitioner, her husband and other vegetable sellers started to go to Visakhapatnam to sell their vegetables from Pataparadesipalem and when they came to Pataparadesipalem bus stop, which is opposite to the eye hospital gate at N.H.5 road and are waiting for the bus, by

sitting on the divider of the road, a lorry bearing Regn.No.31x2959 proceeding from Visakhapatnam came in a rash and negligent manner and at high speed proceeded to the wrong side and hit against her husband and others and ran over her body and on account of which, both his legs were broken and he died on the spot. The petitioner received injuries on both legs as the lorry ran over her legs and crushed them. They were shifted to K.G.Hospital, Bheemunipatnam and the police registered a case in Crime No.169 of 2004 against the driver of the lorry. The first respondent is the owner and second respondent is the insurer of the lorry. According to the petitioner, she was earning an amount of Rs.3,000/- per month. The petitioner filed the said M.O.P.No.897 of 2004 claiming compensation at Rs.4,00,000/- against the respondents for the injuries received by her in the accident.

5) The first respondent filed counter denying the original income of the appellant and contending the compensation claimed by her is excessive and admitted that the vehicle was insured with the insurance coverage and it is in force. Therefore, the second respondent-Insurance Company is liable to pay compensation to the petitioner.

6) The second respondent Insurance Company filed its

counter, putting the appellant to strict proof of the petition averments and the injuries sustained by her are denied and also denied its liability to pay the compensation to the appellant and prayed the court to dismiss the appeal.

7) Basing on the above pleadings, the Tribunal framed three issues and to substantiate the claim, the appellant got examined PWs-1 & 2 and got marked Exs.A-1 to A-10 on her behalf. On behalf of the contesting respondents, no witnesses were examined, but marked Ex.B-1 policy copy.

8) The Tribunal having considered the oral and documentary evidence on record held that the accident occurred due to the rash and negligent driving on the part of the driver of the lorry bearing Regd.No.31x2959, in which the appellant sustained injuries and awarded compensation of Rs.2,00,000/- along with interest at the rate of 9%. Being not satisfied with the compensation awarded by the Tribunal, the appellant filed the present appeal.

9) The learned counsel appearing for the appellant argued that the appellant received crush injuries to her both legs and was admitted in K.G. Hospital, Bheemunipatnam and after five days, her both legs were amputated. As a result, she is not in a position to do any work and she suffered 100%

disability. It is also argued that the Tribunal without considering the nature of avocation of the appellant that she was selling vegetables, granted very meager compensation and as such, prayed the court to enhance the compensation to the appellant as prayed for. It is also argued that the Tribunal has not awarded compensation towards medical expenses, extra nourishment and transportation charges.

10) On the other hand, the learned counsel for the respondents argued that the Tribunal after considering the evidence on record, awarded just compensation and further stated that the Tribunal has not awarded any compensation towards medical expenses, extra nourishment and transportation charges, as the appellant sustained grievous injuries and she was issued disability certificate by the Doctor, who treated her at K.G.Hospital, Visakhapatnam.

11) 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?
- 12) **POINTS:** A perusal of the evidence on record shows

that there is no dispute regarding the manner of accident and that the accident occurred due to the rash and negligent driving of the driver of the lorry bearing Regd.No.31x 2959 and the finding of the Tribunal in this regard needs no interference. Coming to the quantum of compensation, the appellant examined herself as PW-1 and stated that in the accident, she sustained grievous injuries and her both legs were amputated and she was in K.G.Hospital, Bheemunipatnam for a period of five months five days and prayed to grant a compensation at Rs.4,00,000/-. PW-2 is the Doctor, who treated the appellant in the hospital and as per Ex.A-7 disability certificate issued by him, it is stated that there is 100% disability.

13) Considering the facts and circumstances of the case, the notional income of the appellant can be taken at Rs.15,000/- per annum. As she is aged about 30 years, the relevant multiplier 17 has to be applied. Thus the claimant is entitled to get a sum of Rs.2,55,000/- ($\text{Rs.15,000/-} \times 17 = \text{Rs.2,55,000/-}$) as compensation towards loss of dependency. The appellant is also entitled to 6,866/- towards medical expenses as per Ex.A-6 and she is also entitled to get Rs.5,000/- towards transportation charges and Rs.5,000/- towards extra nourishment. In total, the appellant is entitled to

get compensation at Rs.2,71,866/- (Rs.2,55,000 + 6,866/- + 5,000/- + 5,000/- =2,71,866/-). As far as the rate of interest is concerned, in view of different rates of interests granted by the Hon'ble Supreme Court in the decisions reported in ***Sanobanu Nazirbhai Mirza and others v. Ahmedabad Municipal Transport Service***^[1] and ***Rebeka Minz and others v. Divisional Manager, United India Limited Insurance Company Limited and another***^[2], the appellant is entitled to get interest at 7.5% per annum on the enhanced amount of compensation from the date of appeal till the date of realisation.

14) In view of the above discussion, the compensation awarded by the Tribunal to the appellant is enhanced from Rs.2,00,000/- to Rs.2,71,866/-. The enhanced compensation amount of Rs.71,866/- shall carry interest at 7.5% per annum, from the date of appeal till the date of realization. The appellant is permitted to withdraw the said amount as soon as the deposit is made.

15) The appeal is accordingly allowed in part. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

ANIS, J

Dt.18.12.2015

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[\[1\]](#) 2013 ACJ 2733

[\[2\]](#) 2012 ACJ 2328