

HON'BLE MRS JUSTICE ANIS

MACMA NO. 2692 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 judgment and decree dated 17.12.2004, passed by the Chairman, Motor Accident Claims Tribunal-cum- I Additional District Judge, Ongole, in O.P.No.412 of 1999, awarding compensation of Rs.25,000/-.

2. The appellant/petitioner filed the above Original Petition under Section 166 of the Act claiming compensation of Rs.1,50,000/- on account of the injuries sustained by him in a motor vehicle accident that occurred on 24.05.1999.

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

4. The brief averments made in the petition are that the petitioner is a mason maistry and was earning Rs. 80/- per day. While so, on 23.5.1997 when the petitioner was travelling in the RTC bus bearing No. AP 10Z 6967, which was plying between Macherla and Kandukur, at about 4.00 AM i.e. on 24.5.1999 the driver of the bus drove the bus with high speed in a rash and negligent manner and dashed against a stationed lorry bearing No. AP 27 T 8487. As a result, the passengers in the bus sustained multiple injuries and the petitioner sustained fractures to left hand and left leg and also left kneecap and sustained other injuries. Immediately, he was shifted to Government Head Quarters Hospital, Ongole, he was admitted there for treatment and was given first aid. Thereafter, the petitioner was

joined in a private nursing home and he is still undergoing treatment for his fractures. The petitioner also lost his earning capacity due to permanent disability. In spite of the best treatment taken, the fractured bone of the left elbow of the petitioner did not unite properly and the hand is hanging loose and he is getting pain while walking and he suffered permanent disability. Petitioner is a mason and he used to earn Rs. 140/- per day. Due to the accident, he was unable to do any work. Due to rash and negligent driving of the driver of the bus, the accident occurred, therefore the respondent-Corporation is liable to pay compensation of Rs.1,50,000/- with costs and interest at 12% per annum to the petitioner.

5. The brief averments made in the counter filed by the respondent are as follows:

The respondent put the petitioner to prove the manner of accident, his age and income and specifically denied that the petitioner sustained grievous injuries. According to the respondent, the lorry was stopped in the middle of the road and while the driver of RTC bus was driving the bus slowly and cautiously and due to failure of taking necessary precautions by the lorry driver while stopping the lorry on the road, the accident occurred and so there was no negligence on the part of the driver of the bus and as such the respondent was not liable to pay any compensation and further stated that the compensation claimed by the petitioner is high and excessive and prayed the Court to dismiss the petition.

6. Basing on the above pleadings, the Tribunal framed three issues and to substantiate his claim, the petitioner got examined PWs.1 & 2 and got marked Exs.A.1 to A.4 on his behalf. On behalf of the respondent, no oral or documentary evidence was adduced.

7. After considering the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the APSRTC bus bearing No. AP 10Z 6967 by its driver and awarded compensation of Rs.25, 000/- along with interest at 9% p.a. to the petitioner against the respondent.

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

9. The learned counsel appearing for the appellant/petitioner argued that the Tribunal has awarded meager compensation to the petitioner; that though the petitioner sustained grievous injuries, the Tribunal has not awarded compensation for disability and future earnings. It is also argued that the Tribunal has not awarded future loss of income and also not applied the relevant multiplier while granting the compensation of disability and finally prayed the Court to enhance the compensation.

10. On the other hand, the learned counsel for the respondent/APSRTC argued that the petitioner received minor injuries and was discharged from the hospital and he is able to attend his normal avocations without any difficulty and due to the accident, working status of the petitioner will not change and the petitioner has not suffered any future loss and the Tribunal after considering all these aspects rightly awarded just and reasonable compensation and the said compensation awarded by the Tribunal needs no interference. 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:** It is not in dispute that that the accident occurred due to rash and negligent driving of the driver of the APSRTC bus bearing No.AP 10Z 6967, due to which the petitioner received injuries.

Therefore, this finding of the Tribunal regarding the manner in which the accident was occurred, needs no interference.

13. Coming to the quantum of compensation awarded by the Tribunal is concerned, a perusal of the record shows that PW-1 in his evidence categorically stated that he suffered two grievous injuries and the Tribunal awarded meagre amount. A perusal of the record shows that the Tribunal awarded Rs. 10,000/- each for two grievous injuries and awarded Rs. 5,000/- towards pain and suffering. It is no doubt true that the petitioner received two grievous injuries i.e., two fractures, one for his leg and one for his hand. Therefore, considering the evidence of PWs 1 & 2, the compensation awarded for the two grievous injuries is enhanced from Rs. 20,000/- to Rs. 40,000/-. Further, in view of the nature of the injuries received by the petitioner, he is entitled to compensation for medicines and extra nourishment. In my considered view ends of justice would be met if Rs. 10,000/- is granted towards medicines and extra nourishment. Thus, the petitioner is entitled to a total compensation of Rs. 50,000/-

14. The learned counsel for the appellant contended that the Tribunal awarded interest at 9% p.a. against the judgments of the Hon'ble Apex Court and prayed the Court to reduce the rate of interest at 7.5% p.a. In ***Sanobanu Nazirbhai Mirza and others v. Ahmedabad Municipal Transport Service***, the Hon'ble Apex Court granted interest @ 7.5% p.a. In ***Rebeka Minz and others v. Divisional Manager, United India Limited Insurance Company Limited and another***, the Hon'ble Apex Court awarded interest at 7% p.a. Thus, in view of the different rate of interests granted by the Apex Court in the judgments cited above, I am of the considered view that the rate of interest granted by the Tribunal is excessive and therefore, it is a fit case to reduce the rate of interest from 9% to 7.5% p.a. from the date of appeal till the date of realisation.

15. Therefore, in view of the above discussion, the Appeal is allowed in part, enhancing the compensation awarded by the Tribunal from Rs.25,000/- to Rs.50,000/- but reducing the rate of interest from 9% to

7.5% p.a. from the date of appeal till the date of realisation. No order as to costs.

16. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

ANIS, J

Date: 04.12.2015

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