

**HON'BLE SMT JUSTICE ANIS**  
**M.A.C.M.A.No.986 of 2005**

**J U D G M E N T:**

This appeal is filed by the appellant/petitioner under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the order and decree dated 31.01.2005, passed by the Chairman, Motor Accident Claims Tribunal-cum-District Judge, Cuddapah, in M.V.O.P.No.243 of 2003, awarding compensation of Rs.1,36,700/-.

2. The appellant/petitioner filed the above Original Petition under Section 166 of the Act claiming compensation of Rs.5,00,000/- on account of the injuries sustained by her in a motor vehicle accident that occurred on 17.08.2002.

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 on 17.08.2002, while the petitioner and her husband were going to their village on foot through the road leading from Cuddapah to Rayachoti at about 05:00 p.m and when they reached near Anjaneyaswamy Temple on their way and when the petitioner was waiting on the road, the offending jeep bearing registration No.AP.04F.1668 belonging to the first respondent and insured with the second respondent came at high speed in a rash and negligent manner and hit the petitioner from back, as a result she fell down on the road and received multiple fractures to both legs, fracture to left rib and other injuries. The petitioner was shifted to Government Headquarters Hospital, Cuddapah and thereafter, shifted to S.V.R.R. Hospital, Tirupathi, where several surgeries were conducted to set right the fractures. The petitioner was confined to bed, depending on the attendants and she spent Rs.50,000/- towards medicines. Prior to the accident, she was working as coolie in a rice mill of one Harinathareddy

and was earning Rs.100/- per day and therefore, prayed the Court to grant Rs.4,70,000/- as special damages and Rs.30,000/- as general damages.

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

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

The second respondent put the petitioner to prove the manner of accident, her age and income and specifically pleaded that the compensation claimed by the petitioner is high and excessive, and prayed the Court to dismiss the petition.

7. Basing on the above pleadings, the Tribunal framed three issues and to substantiate her claim, the petitioner got examined PWs.1 to 4 and got marked Exs.A.1 to A.14 and Exs.X1 & X2 on her behalf. On behalf of the contesting respondent, no oral or documentary evidence was adduced.

8. After considering the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the lorry bearing No.AP.04F.1668, due to which the petitioner sustained injuries and awarded compensation of Rs.1,36,700/- along with interest at 9% p.a. to the petitioner against both the respondents.

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

10. The learned counsel appearing for the appellant/petitioner argued that the Tribunal has not considered the evidence in a perspective manner as the petitioner suffered five fractures and they are grievous in nature; that petitioner took treatment as inpatient from 18.08.2002 to 23.10.2003 initially in the Government Hospital, Cuddapah and thereafter, at S.V.R.R. Hospital, Tirupathi; that the Tribunal also has not

considered the evidence of PWs.1 & 2 regarding the daily income of the deceased as Rs.100/-, but has taken notional income; that the Tribunal has granted meagre amount under the head of attendant charges, transportation charges and loss of earnings; that the Tribunal has not granted any amount under the head of extra nourishment and prayed the Court to enhance the compensation by allowing the appeal.

11. On the other hand, the learned counsel for the second respondent/Insurance Company argued that after considering the oral and documentary evidence, the Tribunal granted just and reasonable compensation to the petitioner and the said finding of the Tribunal needs no interference and prayed the 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:** A perusal of the record shows that there is no dispute of the fact that on 17.08.2002, due to the rash and negligent driving of the driver of the jeep bearing No.AP.04F.1668, accident occurred in which the petitioner sustained grievous injuries. Therefore, the said finding of the Tribunal needs no interference.

14. As far as the quantum of compensation awarded by the Tribunal is concerned, PW.1 in her evidence categorically stated about her receiving injuries and treatment taken by her in the Government Hospital, Cuddapah and also in S.V.R.R. Hospital, Tirupathi. PW.4 is the doctor, who treated the petitioner and assessed the disability as 25%. He also stated that the petitioner cannot do any hard work, but can do light work. Petitioner underwent treatment as inpatient for about two

months in two spells in S.V.R.R. Hospital, Tirupati and she incurred Rs.23,000/- as medical expenses. The Tribunal by considering the evidence of PW.1 awarded Rs.23,000/- as medical expenses, Rs.10,000/-towards attendant charges and Rs.6,200/- towards transportation charges. A perusal of the evidence of PWs.1 & 4 clearly shows that in the accident, the petitioner sustained grievous injuries and she was treated as inpatient for a considerable period of more than two months in both the hospitals. PW4-doctor also stated that the petitioner is suffering with disability of 25%. According to the petitioner, the Tribunal only assessed the income as Rs.1,500/- p.m, instead of believing the evidence of PW.2, who categorically stated that petitioner was working in his rice mill and he is paying Rs.100/- per day to her. Considering the evidence of PWs.1 & 2, I am of the view that the income of the petitioner can be taken as Rs.3,000/- p.m, which is quite reasonable and as per the medical record, the age of the petitioner was 35 as on the date of accident. The Tribunal has rightly applied the relevant multiplier '15'. Therefore, the loss of earning capacity of the petitioner comes to  $\text{Rs.3,000/-} \times 12 \times 15 \times 25/100 = \text{Rs.1,35,000/-}$ , which is hereby awarded. Apart from the loss of earning capacity, the Tribunal awarded Rs.23,000/- towards medical expenses, Rs.10,000/- towards attendant charges and Rs.6,200/- towards transportation charges, Rs.15,000/- towards pain and sufferings and Rs.15,000/- towards loss of amenities. The finding of the Tribunal with respect to the above heads needs no interference and the petitioner is entitled for the said amount.

15. The other contention of the learned counsel of the petitioner is that the Tribunal has not granted any compensation under the head of extra nourishment. Considering the nature of the injuries and considering the treatment taken by the petitioner in both the hospitals, an amount of Rs.5,000/- is awarded towards extra nourishment. Thus, the petitioner is entitled for a total amount of Rs.2,09,200/- ( $\text{Rs.1,35,000/-} + \text{Rs.23,000/-} + \text{Rs.10,000/-} + \text{Rs.6,200/-} + \text{Rs.15,000/-} + \text{Rs.15,000/-} + \text{Rs.5,000/-}$ ).

15. As far as the rate of interest is concerned, in view of the different rate of interests granted by the Hon'ble Supreme Court in the decisions reported in ***Sanobanu Nazirbhai Mirza and others v. Ahmedabad Municipal Transport Service***<sup>[1]</sup> and ***Rebeka Minz and others v. Divisional Manager, United India Limited Insurance Company Limited and another***<sup>[2]</sup>, I am of the view that interest at 7.5% p.a shall be awarded on the enhanced amount from the date of appeal till the date of realisation.

16. In view of the above discussion, the appeal is partly allowed enhancing the compensation awarded by the Tribunal to the appellant/petitioner from Rs.1,36,700/- to Rs.2,09,200/- along with interest at 7.5% p.a on the enhanced amount from the date of appeal till the date of realisation. No order as to costs.

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

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**ANIS, J**

Date: 11.09.2015  
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<sup>[1]</sup> 2013 ACJ 2733

<sup>[2]</sup> 2012 ACJ 2328