

THE HON'BLE MRS JUSTICE ANIS

M.A.C.M.A.NO.998 OF 2005

JUDGMENT:

This appeal is filed by the appellants/respondents under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the common judgment and decree dated 29.11.2004, passed by the Chairman, Motor Accident Claims Tribunal-cum-Principal District Judge, Kurnool, in M.V.O.P.No.66 of 2003, awarding compensation of Rs.1,85,047/-.

2. The petitioner/appellant filed the above Original Petition under Sections 163-A and 166 of the Act claiming compensation of Rs.3,50,000/- on account of grievous injuries sustained by her in a motor vehicle accident that occurred on 14.02.2002.

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

4. The brief averments made in the petition are that the petitioner is a resident of Dhone and was working as Hamali under the first respondent and earning Rs.75/- per day, that on 14.02.2002 during morning time, the petitioner along with others attended coolie work and in that context, they loaded sand into tractor and trailer bearing Nos.AP-21-V-1038 and AP-21-V-1039 and were proceeding to Dhone for unloading the sand at Dhone and at about 9.30 am, the driver of the tractor and trailer drove the same at high speed in rash and negligent manner due to which the tractor and trailer turned turtle and the petitioner received grievous injuries. She took treatment in Government Hospital, Kurnool. Hence, both the respondents are liable to pay compensation of Rs.3,50,000/- to the petitioner along with interest.

5. The first respondent remained *ex parte*. The brief averments made in the written statement filed by the second respondent are as follows:

The second respondent put the petitioner to prove the manner of accident, the age of the petitioner and income and specifically pleaded 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 four issues and to substantiate her claim, the petitioner got examined herself as P.W.5 and also

examined P.W.6, the doctor, who treated her and filed Ex.A1, copy of post mortem certificate, Ex.A3, copy of Motor Vehicle Inspector Report, Ex.A4, charge sheet and Ex.A8, wound certificate issued by the hospital authorities and also filed Ex.A10, disability certificate and medical bills. On behalf of the contesting 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 driver of the tractor and trailer bearing Nos.AP-21-V-1038 and AP-21-V-1039, due to which the petitioner sustained grievous injuries and one of her legs was amputated and awarded compensation of Rs.1,85,047/- along with interest at 9% p.a. to the petitioner against both the respondents.

8. Not satisfied with the award passed by the Tribunal, the petitioner-appellant preferred the present appeal.

9. The learned counsel appearing for the appellant/petitioner argued that the Tribunal, without considering the injuries received by the petitioner, granted meager compensation and further the Tribunal also has not considered that one of the legs of the petitioner was amputated and being a girl, it is very difficult to get her marriage performed and further, the Tribunal granted meager compensation with respect to pain and suffering, future earnings and extra nourishment and relied upon case law reported in ***Dinesh Singh v. Bajaj Allianz General Insurance Co. Ltd.***, wherein the Apex Court held as following:-

“The appellant, admittedly, was in hospital as an in-patient for a long time. He was operated upon for two times, and presently he is able to move with the assistance of an artificial limb, and he still has to take treatment, as is evident from the evidence of the doctor, and considering the fact that loss of limb causes lot of pain to any living being, we are of the considered opinion that compensation payable to the appellant under the head “pain and agony”, should be reasonable. The Tribunal has awarded Rs.70,000/-, and we feel it appropriate to enhance it by another Rs.50,000/-, and upon such enhancement, the appellant would be entitled to Rs.1,20,000/- under the head “pain and agony”. Therefore, we hold that the High Court erred in reducing the compensation payable to the appellant under the head “pain and agony”.

The compensation payable to the appellant under the heads “loss of amenities” and “loss of marriage prospects”, also requires enhancement. The Tribunal has awarded Rs.2,50,000/- under the head “loss of amenities”. We feel it appropriate to enhance the same by another Rs.1,00,000/-. Upon such enhancement, the appellant would be entitled to Rs.3,50,000/- under the head “loss of amenities of life”.

The Tribunal awarded Rs.50,000/- towards “loss of marriage prospects”. We feel it appropriate to enhance the same by another Rs.50,000/-, and on such enhancement, the appellant would be entitled to Rs.1,00,000/- under the head “loss of marriage prospects”.

Learned counsel further relied on case law reported in ***Kumaresh v. National Insurance Co. Ltd.***, wherein the Apex Court held as following:-

“The appellant is aged just 20 years and one of his legs has been amputated below the knee. It will not only severely affect his future prospects of earning, but he will also have to be permanently disabled for life and suffer the necessary discomforts accompanying living without a leg. It greatly minimizes his chances of getting married. In light of all this, we enhance the amount awarded for loss of amenities and enjoyment of life, including loss of marital prospects, to Rs.3,00,000/-. We also enhance the amount awarded for medical expenses for his whole life to Rs.1,00,000/-, conveyance charges to Rs.50,000/- and for food and nourishment to Rs.50,000/- considering the nature of injuries sustained by the appellant. The compensation awarded by the High Court under the other heads is sustained.”

10. On the other hand, learned counsel for the second respondent argued that after considering the evidence of P.W.5 coupled with the documentary evidence, the Tribunal rightly granted compensation and the said compensation is just and reasonable and finally, conceded to enhance compensation reasonably as the appellant's leg was amputated and being a girl, her marriage prospects also have to be considered.

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 record shows that on 14.02.2002, the petitioner-P.W.5 along with others boarded the Tractor and Trailer bearing Nos.AP-21-V-1038 and AP-21-V-1039 for loading and unloading sand at Dhone and at about 9 am, the driver of the Tractor drove the vehicle in rash and negligent manner, due to which the Tractor turned turtle and the petitioner sustained grievous injuries. To prove the manner of the accident, the petitioner filed Ex.A.1-copy of FIR and Ex.A.4-charge sheet. To dispute the evidence of P.W.5 regarding the manner of the accident, the second respondent has not filed any oral or documentary evidence. Therefore, the finding of the Tribunal that the accident occurred due to the rash and negligent

driving of the driver needs no interference.

13. As far as the quantum of compensation awarded by the Tribunal is concerned, the evidence of the petitioner-P.W.5 categorically shows that she sustained grievous injury in the accident and while taking treatment, her right leg was amputated. P.W.6, who is the Assistant Professor, Orthopedic, Government General Hospital, Kurnool, also gave evidence regarding the injuries received by the petitioner and he also stated that the right leg of the petitioner was amputated. It is no doubt true that the petitioner was aged about 18 to 19 years at the time of the accident. The Tribunal, by applying multiplier '16', awarded compensation of Rs.1,44,000/- towards future loss of income and the said finding of the Tribunal needs no interference. Learned counsel for the petitioner argued that because the petitioner's right leg was amputated, her marriage prospects also get affected. Relying on the judgment of the Hon'ble Supreme Court in ***Dinesh Singh v. Bajaj Allianz General Insurance Co. Ltd.*** (1 supra), an amount of Rs.60,000/- is awarded towards loss of marriage prospects and also enhanced compensation to Rs.15,000/- towards pain and suffering, Rs.15,000/- towards extra nourishment and Rs.5,000/- towards transportation. Thus, the petitioner is entitled to a total compensation of Rs.2,80,047/- (i.e., Rs.1,85,047 + Rs.60,000/- + Rs.15,000/- + Rs.15,000/- + Rs.5,000/- = Rs.2,80,047/-).

14. As far as the rate of interest is concerned, in view of 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*** and ***Rebeka Minz and others v. Divisional Manager, United India Limited Insurance Company Limited and another***, I am of the view that interest at 7.5% per annum shall be awarded on the compensation amount from the date of appeal till the date of realization.

15. In view of the above discussion, the appeal is partly allowed by granting compensation of Rs.2,80,047/- to the appellant and by reducing rate of interest from 9% to 7.5% per annum on the enhanced amount from the date of appeal till the date of realization. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(ANIS, J)

1st October 2015

RRB