

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.866 of 2005

JUDGMENT:

Dissatisfied with the amount of Rs.1,39,676/- granted as compensation by the order dated 19.08.2004 in O.P.No.2268 of 2001 on the file of Chairman, Motor Accidents Claims Tribunal-cum-V Additional Chief Judge, City Civil Court, Hyderabad (for short, 'the Tribunal'), as against the claim of Rs.8,00,000/- laid under Section 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 seeking enhancement of compensation.

2. The appellant herein is the petitioner, while respondent Nos.1 and 2, who are the owner and insurer of the accident vehicle respectively, were respondents 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 24.08.2001 at about 6-50 a.m., while the petitioner was proceeding towards Akbarbagh from TV Tower on foot, a Maruthi van bearing registration NO.AP 11D 3203 coming from behind, driven in a rash and negligent manner dashed her, due to which, she sustained injuries. Even the Station House Officer, Saidabad Police Station registered a case in Crime No.187 of 2001 against the driver of Maruthi van. The petitioner claims that she sustained various fractures and sought compensation, as mentioned above, from the respondent Nos.1 and 2, who are the owner and insurer of the Maruthi van.

5. Before the Tribunal, the 1st respondent, owner of the Maruthi van, remained *ex parte*. The 2nd respondent-insurer opposed the claim by raising various pleas.

6. Basing on the said pleadings, the Tribunal framed the following three issues about the responsibility for the accident:

"1) Whether the petitioner sustained injuries due to rash and negligent driving of the respondent No.1's van?

2) Whether the petitioner is entitled for compensation, if so, to what amount and from whom?

3) To what relief?"

7. During enquiry, the petitioner examined herself as P.W.1 besides examining P.Ws.2 and 3 and marked Exs.A.1 to A.19. On behalf of the contesting 2nd respondent-Insurance Company, no witnesses were examined, but a copy of insurance policy was marked as Ex.B.1 on consent.

8. The Tribunal, on appraisal of evidence on record, both, oral and documentary, let in by the petitioner, held issue No.1 in favour of the petitioner; and on issue No.2, by discussing the evidence on record elaborately, determined the compensation at Rs.1,39,676/- and granted the same with interest at 9% per annum.

9. Aggrieved of the said order, the petitioner preferred the instant appeal seeking enhancement of compensation on the grounds that the Tribunal has not properly appreciated the evidence on record and the permanent disability of 25% to 30% assessed by the concerned Surgeon was not considered and the amount granted was very meager, and, therefore, sought to grant the balance amount.

10. However, at the stage of arguments in the instant appeal, the appellant herein has come up with certain documents, which are the medical bills contending that there was surgical intervention in the year 2005 and the disability certificate was also issued very recently as she sustained partial permanent disability and sought to receive the documents by filing the application under Order 41 Rule 27 r/w Section 151 of C.P.C. Having heard both sides, the said petition was ordered. Since documents now filed are required to be admitted in evidence by reexamining the petitioner who was already examined and the concerned Medical Officer also has to be examined to prove the contents in these documents, it is a fit case to remit it to the Tribunal in order to arrive at just and reasonable compensation.

11. Accordingly, the matter is remitted to the Tribunal with a direction to dispose of the same within six months from the date of receipt of this order by affording a chance to both sides to lead further evidence in determining compensation to which the petitioner is entitled to, basing on the documents now received. The amount, if any deposited by the Insurance Company (2nd respondent herein) and withdrawn by the appellant-petitioner, shall be subject to the result in the original petition and the

direction to be given by the Tribunal thereon depending on the result in the original petition.

12. With the above observations and direction, the instant appeal is allowed by setting aside the order and decree challenged herein, remitting the matter to the Tribunal as indicated above. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

27th March, 2015

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