

THE HON'BLE SMT. JUSTICE ANIS

CIVIL MISCELLANEOUS APPEAL NO. 4805 OF 2004

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 award dated 24.07.2004 passed by the Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge, Nizamabad, in O.P.No.564 of 1999, awarding compensation of Rs.2,000/-.

2. The claimant filed the above O.P under Section 166 of the Act, claiming compensation of Rs.1,00,000/- on account of the injuries sustained by her in a motor vehicle accident.
3. For the sake of convenience, the parties are referred to as arrayed in the O.P. before the Tribunal.
4. The brief averments made in the petition are as follows:

On 22.05.1999, while the petitioner was travelling in an auto rickshaw bearing No.AP25T 6240 along with others from Armour towards Argul village and at about 7.30 p.m. when the auto reached the outskirts of Argul village, the driver of the auto drove it in a rash and negligent manner at high speed and dashed against the road side tree, as a result the petitioner received injuries on her forehead, fracture to left hand, injury to backbone and also other injuries. Immediately, she was shifted to Government Hospital,

Armoor. Subsequently, the petitioner took treatment in private hospitals and spent Rs.40,000/- towards medical and incidental expenses. The police, Jakranpally registered the same as a case in Crime No.20 of 1999 under Sections 337 and 338 IPC against the driver of auto. On account of the injuries, the petitioner is not in a position to do any work. Hence, prayed the Court to grant compensation of Rs.1 lakh.

5. The respondent No.1 remained *ex parte* before the Tribunal on 07.04.2000.

6. The brief averments made in the counter filed by the respondent No.2 before the Tribunal are as follows:

The respondent put the petitioner to prove the manner of accident, age and income of the petitioner besides treatment undertaken by her by spending huge amount. It is further stated that the claim of the petitioner is high, excessive and exorbitant, and finally prayed the Court to dismiss the petition.

7. Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim, PWs 1 and 2 were examined and got marked Exs.A.1 to A.5. On behalf of the respondent No.2, RW1 was examined and got marked Exs.B.1 to B.3.

8. The Tribunal, after considering the oral evidence of PW1 coupled with Ex.A.1, held that the accident occurred due to

rash and negligent driving of the driver of auto rickshaw and awarded compensation of Rs.2,000/- along with interest at 9% per annum against both the respondents.

9. Not satisfied with the award passed by the Tribunal, the appellant/petitioner preferred the present appeal.

10. The learned counsel for the appellant/petitioner argued that in the accident the petitioner sustained 45% permanent partial disability and that the Tribunal has not considered the disability suffered by the petitioner and awarded meagre compensation. It is further argued that the petitioner spent huge amount towards medical expenses and that aspect also has not considered by the Tribunal. Therefore, prayed the Court to enhance the compensation.

11. On the other hand, the learned counsel for the respondent No.2 called absent and no representation made on his behalf.

12. Having regard to the submissions made by the learned counsel for the appellant, the points that arise for consideration are:

1. Whether the appellant/petitioner is entitled for enhancement of compensation?
2. Whether the compensation awarded by the Tribunal is just and reasonable?

13. **Points:**

There is no dispute that the accident occurred due to rash and negligent driving of the driver of auto rickshaw bearing No.AP25T 6240, in which the petitioner sustained injuries and this finding of the Tribunal needs no interference.

14. Coming to the quantum of compensation awarded by the Tribunal, in the accident, the petitioner suffered one simple injury, as such the Tribunal awarded Rs.1500/- towards such injury and Rs.500/- towards pain and suffering.

15. The main contention of the learned counsel for the appellant is that the Tribunal had not considered the disability certificate Ex.A.3 wherein it is categorically mentioned that the petitioner sustained permanent partial disability of 45% and therefore prayed the Court to enhance the compensation.

16. Admittedly, in Government Hospital, Nizamabad, there is a Medical Board and PW2 is not the doctor who had conducted any operation on the petitioner. PW2 also has not seen the medical record of the petitioner, but by seeing X-rays without Radiologist report, he issued the disability certificate, which cannot be taken into consideration.

17. Further, the Tribunal also held that deliberately the petitioner withheld the wound certificate issued by the Government Medical Officer and pressed into service PW2 to depose evidence in her favour to get more and more compensation. Even as per the wound certificate issued by the doctor, the petitioner suffered one simple injury, for that the Tribunal rightly awarded Rs.1500/- as compensation and also awarded Rs.500/- towards pain and suffering.

18. It is no doubt that the petitioner must have spent some amount towards medical expenses and extra nourishment. Therefore, an amount of Rs.500/- is granted towards medical expenses and an amount of Rs.500/- is granted towards extra nourishment. Thus, the petitioner is entitled for compensation of Rs.3,000/- from both the respondents jointly and severally instead of Rs.2,000/- awarded by the Tribunal.

19. Therefore, in view of the above discussion, the compensation awarded by the Tribunal is enhanced from Rs.2,000/- to Rs.3,000/- and on the enhanced amount of Rs.1,000/-, an interest @ 7.5% per annum is awarded from the date of appeal till the date of realisation.

20. Accordingly, the appeal is partly allowed. No order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

(ANIS, J)

14.09.2016
Anr

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