

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2480 OF 2009

JUDGMENT:

Heard Sri A. Prabhakar Rao, learned counsel for the appellant - petitioner.

2. The sole respondent viz., the erstwhile Andhra Pradesh State Road Transport Corporation, by its Managing Director, Hyderabad (APSRTC), though, served with notice, not entered appearance.

3. On the ground that the amount of Rs.34,728/- granted towards compensation, through the order and decree dated 28.05.2007, by the learned Chairman, Motor Accidents Claims Tribunal - cum - VI Additional District Judge (III Fast Track Court), Warangal, Mahabubabad (for short 'Tribunal') in M.V.O.P No.1283 of 2005, for the injuries sustained by the petitioner is grossly inadequate as the claim itself was laid for Rs.2,00,000/- under Section 166 of the Motor Vehicles Act, 1988, the present appeal is preferred under Section 173 of the Motor Vehicles Act, 1988.

4. The accident did occur at the time when the petitioner was aged about 16 years due to rash and negligent driving of the driver of the APSRTC bus bearing No.AP-10-Z-5488. The petitioner sustained head injury and lost sensorium and got treated herself in Jaya Hospital, Hanamkonda and NIMS at Hyderabad as inpatient between

13.10.2004 and 20.10.2004. Therefore, she claimed a total sum of Rs.2,00,000/- towards compensation.

5. Counter was filed by the APSRTC attributing negligence to the petitioner herself.

6. Three (3) issues were framed by the Tribunal based on the rival pleadings.

7. During enquiry before the Tribunal, the petitioner examined herself as PW.2 and her father, who was her next friend, as PW.1 and the doctor who treated her in NIMS Hospital as PW.3, and marked Exs.A-1 to A-40; and on behalf of the APSRTC, RW.1 was examined and no documents were filed.

8. Perused the order and the decree under challenge and the evidence on record, more particularly, the evidence of PW.3, the medical officer.

9. The Tribunal, on appreciation of evidence on record, while recording finding on issue No.1 in favour of the petitioner, on issue No.2, awarded Rs.400/- towards treatment charges in Jaya Hospital, Rs.1,600/- towards C.T. scan charges, Rs.12,262/- towards medical expenses in NIMS Hospital based on A-14 entries and the evidence of PW.3, Rs.2,466/- as per Exs.A-16 to A-37 towards medical bills, Rs.5,000/- towards transport charges, Rs.3,000/- towards extra-nourishment, for speedy recovery from the injury and Rs.10,000/-

towards pain and suffering. The Tribunal has not awarded any amount to compensate the loss of one academic year on the ground that no evidence was placed to convince it. Thus, a total sum of Rs.34,728/- was awarded towards compensation with interest at 7.5% per annum.

10. Now the short question that arises for consideration is whether the compensation awarded by the Tribunal is just and adequate, and, if not, to what amount the petitioner is entitled towards enhancement?

11. The evidence of PW.3, the medical officer, who was a Neuro Surgeon in NIMS Hospital, would show that the petitioner was treated conservatively as she sustained diffuse axonal injury which was grievous in nature and the injury received by the petitioner is a brain injury and the same can affect any of the brain functions and proved Exs.A-6, A-12, A-14 and A-37. According to his statement, the petitioner was unconscious when she was admitted in the hospital and even on the date of discharge, she was not fully conscious. Thus, he identified Ex.A-12. Evidence of this witness, cannot be discarded and ought to be given due importance in view of the nature of injuries sustained by the petitioner, more particularly, the memory being affected during an academic year, at which time, she was prosecuting tenth class, according to her evidence. Thus, the Tribunal was not right in holding that the petitioner has not placed any material to show that she lost one academic year. So, the amount of Rs.10,000/-

granted by the Tribunal towards pain and suffering appears to be on lower side as against the claim of Rs.30,000/- and there was loss of sensorium temporarily as the evidence of PW.3 would show that the petitioner did not regain memory completely. Therefore, certainly, the petitioner is entitled to Rs.30,000/- as against Rs.10,000/- granted by the Tribunal towards pain and suffering. Towards loss of one academic year, at a critical stage as she was prosecuting 10th class, which can be culled out from the evidence of PW.3 as mentioned in the above, she requires to be compensated and, therefore, a sum of Rs.20,000/- is granted under this head. The medical bills amounting to Rs.400/-, Rs.1,600/-, Rs.12,262/- and Rs.2,466/- are maintained as it is not the case of the petitioner that any of the medical bills were not taken into consideration. Even the amount of Rs.5,000/- granted towards transport charges can be maintained. But, however, towards her stay and the support from her parents who invariably have to incur certain amount, a sum of Rs.10,000/- is granted towards attendant charges or assistance to the petitioner. Towards extra nourishment, the amount of Rs.3,000/- granted by the Tribunal is enhanced to Rs.5,000/- as claimed by the petitioner.

12. Thus, the petitioner is entitled to a total amount of Rs.86,728/- (Rupees eighty six thousand seven hundred and twenty eight only) towards compensation as against Rs.34,728/- granted by the Tribunal, and the same is accordingly granted. The rate of interest awarded by the Tribunal at 7.5% per annum is in tune with the

decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**¹, as such, the same is maintained on the enhanced compensation also.

13. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned order and enhancing the compensation, as indicated above. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the appeal stand disposed of.

A. SHANKAR NARAYANA, J

December 27, 2016.
PV

¹ 2013ACJ1403 = 2013(4)ALT35

