

**THE HONOURABLE SRI JUSTICE U.DURGA PRASAD
RAO**

M.A.C.M.A.No.1294 of 2009

JUDGMENT:

Challenging the compensation awarded in O.P.No.350 of 1999 dated 24.03.2005 by the Chairman, M.A.C.T-cum-VI Additional District Judge (Fast Track Court), Nizamabad at Kamareddy, (for short “the Tribunal”), the claimants preferred the instant appeal._

2) The factual matrix of the case is thus:

(a) On 23.08.1998 the first claimant was travelling in a APSRTC Bus bearing No. AP 9Z 9929 from Tujalpur Village to Kamareddy and when it reached near the outskirts of Tujalpoor Village at about 2.45 PM, the driver of bus drove the same in a rash and negligent manner at high speed and as a result of which, the bus turned turtle and the first claimant received fracture and multiple grievous injuries. It is averred that the accident was occurred due to rash and negligent driving of the driver of the bus. On these pleas, the claimants filed O.P.No.350 of 1999 under Section 166 of Motor Vehicles Act, 1988, (for short “the Act”) claiming compensation of Rs.1,50,000/-.

b) Respondent/APSRTC filed counter denying all the material averments made in the petition and urged to put the claimants in strict proof of the same. It denied the age, avocation and income of the deceased first claimant and contended that the accident was not occurred due to the fault of driver of the vehicle. Finally, it contended that the compensation claimed by the claimants was high and excessive and thus prayed to dismiss the O.P.

c) During trial, PWs. 1 and 2 were examined and Exs.A1 to A5 were marked on behalf of claimants. On behalf of respondents, none were examined and no documents were marked.

d) Since the first claimant, who filed the OP, died pending the claim petition, her L.Rs were brought on record before the Tribunal, as per the Order in I.A.No.509 of 2004 dt. 2.09.2004.

e) On appreciation of both oral and documentary evidence, the Tribunal awarded total compensation of Rs.30,000/- with costs and interest at 9% p.a under different heads as follows:

Fracture injury	Rs.	15,000-00
Loss of earnings	Rs.	12,000-00
Travelling & Medical expenses	Rs.	03,000-00

Total	Rs.	30,000-00

Hence, the appeal by the claimants.

3) The parties in this appeal are referred as they stood before the Tribunal.

4) When the matter is taken up for hearing, there is no representation for appellants, though the matter is pertaining to the year 2009. I have perused the grounds of appeal and the other material available on record.

5) Heard Sri N. Vasudeva Reddy, learned counsel for respondents/APSRTC.

6) As can be seen from the grounds of appeal, the main grievance of the appellants, who are the L.Rs of the deceased first claimant, is that though the deceased first claimant suffered fracture of neck of right femur, the Tribunal did not award any compensation for pain and suffering and therefore, she deserves compensation in that regard. It is also disputed in the grounds of appeal, that the compensation awarded for medical and travelling expenses and loss of earnings is very low. Therefore, the appellants prayed for re-assessment of the compensation.

7) Per contra, learned counsel for respondents/APSRTC vehemently argued that the compensation awarded under different heads is just and reasonable and there is no need to revise the same. Hence, he sought for dismissal of the appeal.

8) In the light of the above rival contentions, the point for determination is:

“ Whether the compensation awarded by the Tribunal is just and reasonable or needs enhancement?

9) **POINT:** The accident, involvement of first claimant and APSRTC bus bearing No. AP 9Z 9929 and suffering of fracture injury by the first claimant to the neck of her right femur are not in dispute. The only dispute is with regard to quantum of compensation.

10) When record is perused, this Court finds no merit in the contention of the appellants. It is true as per Ex.A.3—Wound Certificate the first claimant suffered fracture neck of right femur in her middle age, but the lower Tribunal did not award any compensation under the head ‘Pain and Suffering. However, pain and suffering is the personal experience of the deceased first claimant and she would be entitled to compensation had she alive. Her L.Rs are not entitled to claim compensation for pain and suffering of the deceased first claimant. Therefore, to that extent, the appellants cannot lay any claim.

11) The next contention of the appellants is that the Tribunal awarded a low amount of Rs.3,000/- towards Travel and Medical expenses. I find some force in the said contention. Having regard to the grievous nature of the injuries suffered by the first claimant and the treatment underwent thereafter, the amount awarded under Travelling and Medical Expenses is too low. Further, the Tribunal did not award any amount for attendant charges. Considering all these facts, a sum of Rs.15,000/- is awarded for travelling, medical and attendant

charges.

12) The next contention of the appellants is that the Tribunal awarded a low amount for loss of past earnings. It is seen that the Tribunal fixed the monthly income of the claimant as Rs.3000/- and awarded Rs.12,000/- on the premise that for four months, she deserved loss of earnings. I find no irregularity or illegality in it. Thus, the total compensation payable to the claimants under different heads is as follows:

a) Fracture Injury	Rs. 15,000/-
b) Loss of Earnings	Rs. 12,000/-
c) Travelling & Medical Expenses	Rs. 15,000/-
Total	Rs. 42,000/-

So, the compensation is enhanced by Rs.12,000/- (Rs. 30,000 minus Rs.42,000/-).

13) In the result, this MACMA is partly allowed with costs and ordered as follows:

- a) The compensation is enhanced by Rs.12,000/- with proportionate costs and interest and the enhanced compensation shall carry interest @ 7.5% p.a. from the date of OP till the date of realization,
- b) Respondents in the OP are directed to deposit the compensation amount within two months from the date of this judgment, failing which, execution can be taken out against them.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 28.03.2016
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**THE HONOURABLE SRI JUSTICE U.DURGA PRASAD
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