

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1368 OF 2009

JUDGMENT:

Having got dissatisfied with the award of Rs.27,000/- as compensation by the order dated 02.09.2004 in O.P. No.654 of 1999 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-
I Additional District Judge, Ongole (for short, 'the Tribunal') as against the claim of Rs.70,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') for the injuries sustained by the appellant-petitioner in a road accident, the instant appeal is preferred under Section 173 of the Act seeking enhancement of compensation, since she sustained fracture of collar bone.

2. The appellant herein is the petitioner, while respondent Nos.1 and 2 herein, who are the District Medical and Health Officer, Prakasam District, Ongole and the Government of Andhra Pradesh, represented by the Collector, Ongole, are respondent Nos.1 and 2, respectively, in the original petition.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The facts would show that respondent No.1, in order to mobilize the people for "Janabha Niyanthrana Dinotsavam", collected the petitioner and some more

women and taking them in a departmental van, Swaraj Mazda bearing registration No.AP 09U 1484 to Hyderabad from Chirala, having started at 4-30 p.m. on 10.07.1999 and, in the early hours of 11.07.1999 at about 3-30 a.m., while the said van was moving between Serigoda and Mangalapalli gate, since the driver was driving it at high speed, he lost control over the vehicle, due to which, it turned upside down causing injuries to the inmates of the vehicle and they were shifted to Government Hospital, Ibrahimpatnam and from there to Nizam Institute of Medical Sciences, Hyderabad. Having taken first-aid, she came back to Ongole, got treated herself having been admitted in Government Headquarters Hospital, Ongole on 14.07.1999 and discharged on 06.08.1999. On the ground that she could not regain normal health on account of the injury, she sought compensation of Rs.70,000/- from the respondents.

5. Respondent No.1-District Medical and Health Officer, Prakasam District, Ongole, filed counter, which was adopted by respondent No.2-Government of Andhra Pradesh, represented by the Collector, Ongole, stating that the petitioner sustained simple injuries and the claim petition is laid to make wrongful gain and, therefore, sought to dismiss the claim petition.

6. Basing on the said pleadings, the Tribunal

framed three common issues about the responsibility for the accident. During enquiry, the petitioner examined herself as P.W.1 besides examining the doctor as P.W.2 and marked Exs.A.1 to A.5; whereas on behalf of the respondents, one A.N.M.Prasad was examined as R.W.1 and no documents were filed.

7. The Tribunal, on appraisal of evidence on record, both, oral and documentary let in by both the parties, observing that the accident was caused due to rash and negligent driving of the driver of Swaraj Mazda van, held issue No.1 in favour of the petitioner; and on issue No.2, referring to various assertions made by P.W.1 and the evidence of the doctor examined as P.W.2 and having found that she suffered deformity of right clavicle, awarded Rs.20,000/- towards fracture of collar bone, Rs.2,000/- towards loss of income and Rs.5,000/- towards pain and suffering, making a total of Rs.27,000/- with interest at 9% per annum.

8. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal has not properly assessed the disability and granted compensation and, therefore, sought to grant the balance amount.

9. Heard Sri K.Ananda Rao, learned counsel for the appellant-petitioner. Though service was completed on respondent Nos.1 and 2, none appears for them.

10. Perused the order and the material on record. The amount of Rs.20,000/- granted by the Tribunal towards fracture of collar bone appears to be reasonable, as the accident took place in the year 1999. When kept in view, the inconvenience with which the petitioner had to bear, the same is enhanced to Rs.30,000/-. The loss of income granted by the Tribunal at Rs.2,000/- is without any elaboration and keeping in view, the nature of injury sustained by the petitioner, the same is enhanced to Rs.6,000/-. The amount of Rs.5,000/- granted by the Tribunal towards pain and suffering is maintained.

11. Thus, the petitioner is entitled to a total sum of Rs.41,000/- (Rupees forty one thousand) as against Rs.27,000/- granted by the Tribunal towards compensation and the same is accordingly granted. So far as the rate of interest is concerned, the Tribunal granted the same at 9% per annum and the same is maintained on the amount granted by the Tribunal and the interest at 7.5% per annum is granted on the enhanced amount in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[1].

12. Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation, as indicated above, and

confirming the same in all other respects. There shall be no order as to costs.

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

A. SHANKAR

NARAYANA, J

9th August, 2016

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