

HON'BLE SMT JUSTICE ANIS

M.A.C.M.A. No. 4524 OF 2008

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 Order, dated 26.09.2007, in O.P.No.1503 of 2002, passed by the Chairman, Motor Accidents Claims Tribunal-cum-VIII Additional District Judge, Nizamabad.

2. The claimant filed the above O.P. under Section 166 (1) (a) of the Act claiming compensation of Rs.6,00,000/- on account of injuries sustained by her in a road accident.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4. The brief averments made in the petition are that on 02.07.2002 at 12:00 noon the claimant was going to Anganwadi school in Bichkunda village and when she reached in front of Vengamamba hotel near bus stand, a Jeep bearing No.MH-26-C-821 came at high speed and hit the claimant, as a result, she fell down and sustained severe injuries. Immediately she was shifted to Government Hospital, Bichkunda and from there she was referred to Government Hospital, Nizamabad for treatment. According to the claimant, the accident occurred due to rash and negligent driving of driver of Jeep and therefore, respondents 1 and 2 jointly liable to pay compensation.

5. The first respondent remained *ex parte* before the Tribunal.

6. The brief averments made in the written statement filed by the second respondent are that the respondent put the claimant to prove the manner of accident, age, income, injuries received in the accident, treatment taken by her in various hospitals and the amount spent towards treatment. It was further stated that the compensation claimed by the claimant is high and excessive and prayed to dismiss the petition.

7. Basing on the above pleadings, the Tribunal framed three issues and to substantiate the claim of the petitioner, PWs 1 to 3 were examined and got marked Exs.A.1 to A.8 and Ex.C.1. On behalf of the second respondent, no oral evidence was adduced but marked Ex.B.1 by consent.

8. Basing on the oral and documentary evidence available on record, the Tribunal held that the accident occurred due to rash and negligent driving of driver of Jeep bearing No.MH-26-C-821, in which the claimant sustained injuries and awarded compensation of Rs.38,000/- with interest @ 7.5% per annum. Not satisfied with the compensation awarded by the Tribunal, the appellant/claimant filed the present appeal.

9. Learned counsel for the appellant argued that the appellant is doing agricultural work and earning Rs.10,000/- per month and this aspect has not been considered by the Tribunal. He further contended that the appellant has suffered 15% disability and that aspect is also not taken into consideration and awarded meagre compensation though the petitioner has spent huge amount towards treatment and hence, prayed to enhance the compensation.

10. On behalf of 2nd respondent insurance company, it is argued that the Tribunal after considering the oral and documentary evidence, awarded just and reasonable compensation and therefore, there are no grounds to interfere with the impugned order and prayed to dismiss the appeal.

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

- 1) Whether the Award passed by the Tribunal is legal and sustainable?
- 2) Whether the appellant is entitled for enhancement of compensation?
- 3) To what relief?

12. **POINTS:**

On perusal of evidence of P.Ws.1 to 3, there is no dispute that the accident occurred due to rash and negligent driving of driver of Jeep bearing No.MH-26-C-821, in which the appellant sustained grievous injuries. Further, the claimant, who was examined as P.W.1, clearly stated that as a result of accident, she received two grievous injuries and two simple injuries. Ex.A.3-wound certificate clearly shows that the appellant sustained injuries in the accident. Further, P.W.2, the Doctor, who treated the appellant in the Government Hospital, Nizamabad from 02.07.2002 to 16.07.2002 stated about the nature of injuries sustained by the appellant. Therefore, taking into consideration the evidence of P.W.2 coupled with Ex.A3-wound certificate, proves that the appellant sustained severe injuries, hence, she is entitled to enhancement of compensation.

13. The Tribunal has awarded an amount of Rs.20,000/- towards pain and suffering, but the same is enhanced to Rs.30,000/-. Further, the appellant was in hospital for a period of 14 days and incurred huge medical expenses. The Tribunal granted an amount of Rs.10,000/- towards medial expenses and extra-nourishment, but the same is enhanced to Rs.20,000/-. The Tribunal has rightly calculated the income of the appellant and granted an amount of Rs.6,000/- towards loss of earnings and the said finding is not interfered with. The Tribunal rightly awarded an amount of Rs.2,000/- towards attendant charges and the same is not interfered with by this Court.

14. Though learned counsel for the appellant would submit that the appellant has suffered 15% disability, there is no proof to show that she suffered 15% disability due to the accident. Therefore, the Tribunal rightly held that the appellant is not entitled for any compensation towards permanent disability.

15. Accordingly, the appeal is partly allowed enhancing the compensation from Rs.38,000/- to Rs.58,000/- (Rupees fifty eight thousand only) with interest @ 7.5% per annum from the date of appeal till the date of realisation. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

ANIS, J

Date: 25.11.2016
YVL

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