

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2571 OF 2005

JUDGMENT:

Having got dissatisfied with the amount of Rs.25,000/- granted as compensation by the order dated 01.07.2005 in O.P. No.865 of 1998 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Adilabad (for short, 'the Tribunal') as against the claim of Rs.2,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') r/w Rule 455 of the Rules framed thereunder, for the injuries sustained by the appellant in a road accident, who also said to have delivered a still-born child due to the impact of the accident, the instant appeal is preferred under Section 173 of the Act seeking enhancement of compensation.

2. The appellant herein is the petitioner, while respondent Nos.1 and 2 herein, who are the owner and insurer of offending auto rickshaw bearing registration No.AP 1U 810, respectively, and respondent Nos.3 and 4, who are the owner and insurer of the auto rickshaw bearing registration No.AP 1U 305, in which the appellant-petitioner was travelling at the time of accident, 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 in brief are that on 23.10.1997, the petitioner, having taken treatment, along with her father-in-law, was returning to their native village, Rajampet, in an auto rickshaw bearing registration No.AP 1U 305 by paying hire of Rs.10/- per head and when it reached Kothur bus stage, another auto rickshaw bearing registration No.AP 1U 810 came in opposite direction driven at high speed and dashed against the auto rickshaw in which the petitioner was travelling, due to which, it turned upside down, resulting fracture to her right leg and other internal injuries. She was immediately shifted to Government Hospital, Luxettipet, where she was given first-aid and she was shifted to M.G.M. Hospital, Warangal, where she was admitted and while undergoing treatment, since she suffered pains as she was pregnant with nine months pregnancy, she was shifted to G.K.M. Government Maternity Hospital, Matwada, Warangal on 02.11.1997, and, on the same day, she delivered a male still-born child due to her sustaining of internal injuries in the said accident. She was again shifted to M.G.M. Hospital, Warangal, where she took treatment as an inpatient till 11.11.1997. Concerned police also registered a case in Crime No.134 of 1997 for the offence

punishable under Section 338 IPC against the driver of the offending auto rickshaw. Claiming that she was earning Rs.50/- to Rs.60/- per day and she became disabled due to the accident, she sought a sum of Rs.2,00,000/- as compensation from respondent Nos.1 to 4.

5. Respondent No.1-owner of the accident vehicle remained *ex parte* before the Tribunal. Respondent No.2-insurer of the accident vehicle filed counter opposing the claim. Respondent Nos.3 and 4, who are the owner and insurer of the auto rickshaw in which the petitioner was travelling at the time of accident, also filed counter opposing the rash and negligent driving attributed to the driver of the auto rickshaw in which the petitioner was travelling.

6. Basing on the said pleadings, the Tribunal framed the following issues about the responsibility for the accident:

"1. Whether the petitioner sustained injuries in the accident occurred on 23.10.1997 due to the rash and negligent driving of auto bearing No.A.P.1.U-810 or No.A.P.1.U-305 by its drivers?

2. Whether the petitioner is entitled to any compensation. If so, to what amount and against whom?

3. To what relief ?"

7. During enquiry, the petitioner examined herself as P.W.1 besides marking Exs.A.1 to A.6 to substantiate her claim; whereas, on behalf of the respondents, no witnesses were examined and no documents were marked.

8. The Tribunal, on analyzing the evidence let in by the petitioner, recorded finding on issue No.1 that due to rash and negligent driving of the auto rickshaw bearing registration No.AP 1U 810, the accident had occurred. On issue No.2, the Tribunal, though, referred to Ex.A.3-original medical certificate issued by Deputy Civil Surgeon, Government Maternity Hospital, Matwada, Warangal, disclosing that the petitioner was admitted in the said hospital on 31.10.1997 and delivered a male dead child on 02.11.1997 at 7-50 a.m., still, the Tribunal has taken only two grievous and one simple injuries sustained by the petitioner as per the entries recorded in Ex.A.2-injury certificate. The Tribunal having discussed Ex.A.2-injury certificate and finding that the petitioner sustained only one grievous and six simple injuries, awarded a sum of Rs.25,000/- as global compensation with interest at 9% per annum.

9. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that meager compensation was granted by the Tribunal

without appreciating the evidence on record in proper perspective. It is also stated that the Tribunal ought to have considered the circumstance that the petitioner taken treatment as an inpatient in M.G.M. Hospital, Warangal, and while undergoing treatment, she was admitted in Government Maternity Hospital, Matwada, Warangal, where she gave birth to a still-born child due to the impact of the accident, and, therefore, sought to grant balance amount.

10. Heard Sri S.Surender Reddy, learned counsel for the appellant-petitioner. Though, respondent Nos.1 and 2 were served, none appeared for them. So far as respondent Nos.3 and 4 are concerned, it is recorded in the cause title of grounds of appeal that they are not necessary parties. Even the Tribunal has not fastened any liability on respondent Nos.3 and 4 and the liability was fastened only on respondent Nos.1 and 2, who are owner and insurer of the offending auto rickshaw.

11. Perused the evidence on record. Admittedly, the petitioner has not examined any of the doctors, but exhibited the medical record. Ex.A.2 shows that the petitioner sustained two fractures to her right leg. First being comminuted fracture of shaft of right femur upper 1/3rd and the second being fracture of both bones of right leg middle 1/3rd of right leg and one simple injury. As seen from the nature of injuries described in Ex.A.2 and

the circumstance that the petitioner was with ninth month pregnancy on the date when the accident had taken place and she was even shifted to G.K.M. Government Maternity Hospital, Matwada, Warangal, while undergoing treatment in M.G.M. Hospital, Warangal, where she delivered a still-born child and Ex.A.3 being issued by the Deputy Civil Surgeon – Resident Medical Officer, Government Maternity Hospital, Matwada, Warangal, there is no reason to disbelieve the entries in Exs.A.2 and A.3. When viewed in that angle, certainly, the petitioner not only sustained two grievous injuries to right leg which invariably must have disabled her in attaining normalcy atleast for one year but also lost the child as she gave birth to a still-born child, though, oral evidence is not let in, but the documentary evidence would establish in unmistakable terms that within ten (10) days of the accident, delivery had taken place clearly indicating that due to impact of the accident, she had to give birth to a dead child. Hence, the petitioner is entitled to the amount claimed by her.

12. Thus, the petitioner is entitled to a sum of Rs.2,00,000/- (Rupees two lakhs) as against Rs.25,000/- 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, but on the enhanced amount, interest at 7.5% per annum is granted in view of the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1].

13. Accordingly, the instant appeal is allowed modifying the order passed by the Tribunal, by enhancing the compensation with interest, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

19th January, 2016

siva

^[1] 2013 ACJ 1403