

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.3274 of 2005

JUDGMENT :

Seeking enhancement of compensation, the appellant/claimant, who sustained injuries in the accident that occurred on 26.10.2000, preferred the instant Civil Miscellaneous Appeal, assailing the judgment and decree dated 21.07.2005 in O.P.No.110 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Sangareddy, Medak District, (for brevity "the Tribunal"), whereby and whereunder a sum of Rs.75,000/- was awarded towards compensation, as against the claim of Rs.3,00,000/- made under Section 166 of the Motor Vehicles Act, 1988.

2. For the sake of convenience, in this appeal, the parties are referred to as they are arrayed in O.P.No.110 of 2001 before the Tribunal.

3. The facts, in brief, would show that on 26.10.2000 at about 9-30 p.m., the claimant was proceeding from her house on a scooter belonging to the 1st respondent to attend the Laxmi Pooja of Deepavali festival at her relatives house near Anurag Talkies, Zaheerabad, and when the scooter was passing from the Bus stand, the bus belonging to respondent No.3 – A.P. State Road Transport Corporation came at a high speed in rash and negligent manner and hit the backside of the scooter, due to which the claimant suffered injuries and she was treated in Nizam's Institute of Medical Sciences (NIMS). According to her, she was treated as

inpatient for more than one month and skin grafting was also done on her. Even the S.H.O., Zaheerabad P.S., have registered a case in Crime No.170/2000 for the offences punishable under Sections 337 and 338 IPC against the driver of the bus belonging to respondent No.3 - Corporation and hence sought a sum of Rs.3,00,000/- towards compensation for the injuries sustained by her and also for the damages caused to the scooter, by making respondent Nos.1 and 2, who are the owner and insurer of the scooter, which she was driving at the relevant time, and respondent No.3 – A.P. State Road Transport Corporation.

4. Before the Tribunal, the 1st respondent was set *exparte* and 2nd respondent filed counter opposing the claim by raising various grounds and finally sought to exonerate it from the liability. The 3rd respondent-Corporation has also filed counter resisting the claim of the claimant by denying various averments as to the age, income and the manner in which the accident had occurred.

5. Basing on the said pleadings, the following issues were framed for trial as to the responsibility of the accident.

- “(1) Whether the accident took place on account of the rash and negligent driving of the driver of the APSRTC Bus bearing No.AP-10Z 6263 of Zaheerabad Depot by dashing the scooter and caused injuries to the claimant?
- (2) What is the quantum of compensation the claimant is entitled to?
- (3) To what relief?”

6. During enquiry, the claimant, besides examining herself as P.W.1, has examined Dr. D. Mukund Reddy as P.W.2, and

marked Exs.A.1 to A.11. On behalf of respondent Nos.2 and 3, no witnesses were examined and no documents were marked.

7. On appreciation of evidence on record, the Tribunal held issue No.1 in favour of the claimant holding that due to the rash and negligent driving by the driver of the Corporation, the accident had occurred.

8. As regards compensation, the Tribunal has considered the evidence on record adduced through P.W.2 and the documentary evidence under Exs.A.3 to A.11 and awarded a sum of Rs.3,700/- towards transportation and extra nourishment, Rs.16,000/- towards sustaining fracture of pelvic bone, Rs.5,000/- towards the injuries and the scar, Rs.5,000/- towards pain and suffering, Rs.46,300/- towards medical expenses. Thus, a total compensation of Rs.75,000/- was awarded with interest @ 7.5% per annum from the date of the petition till realization, against respondent No.3 only, while dismissing the claim petition against respondent Nos.1 and 2, without costs.

9. It is the aforesaid order, which is under challenge in this appeal seeking enhancement of compensation, contending in the grounds of appeal that the Tribunal has not properly appreciated the evidence on record and the amounts awarded towards various components are on lower side and, therefore, sought to grant the balance amount.

10. Heard Sri R.K.G. Bhatia, learned counsel for the appellant/claimant. While there is an endorsement that respondent Nos.1 and 2 are not necessary parties to this appeal, though respondent No.3 – A.P. State Road Transport Corporation is

served, none appears for the Corporation.

11. Perused the impugned judgment and the evidence on record, both, oral and documentary, let in by the appellant/claimant.

12. A perusal of the medical evidence adduced on commission through P.W.2 – Dr. D. Mukund Reddy, who is working as Professor of Plastic Surgery Wing of NIMS Hospital, Hyderabad, and the documents under Exs.A.5 and A.6, would show that the claimant was admitted in the Hospital on 27.11.2000 as an inpatient with IP.No.19317 and she was discharged on 01.01.2001. The evidence of P.W.2 would further show that the claimant was treated for the removal of dead tissues followed by skin grafting on 16.12.2000 and on 26.12.2000. As seen from the contents of said documents, the claimant sustained fracture of pelvic bone and she was treated for the said injury.

13. Coming to the amounts awarded by the Tribunal, while determining the compensation, the Tribunal has not taken into consideration Ex.A.9 – Transport bills on the ground that the contents therein were not proved by examining anyone. Further, the Tribunal has granted a sum of Rs.3,700/- towards transportation and extra-nourishment. In fact, as seen from Exs.A.5 and A.6, which are O.P. Card and Discharge Summary, respectively, the claimant was discharged on 01.01.2001 and, therefore, the amount of Rs.3,700/- granted towards transportation and extra-nourishment is enhanced to Rs.5,000/-, treating it towards transportation charges only. Keeping in view, the grievous injuries sustained by the claimant, which is a fracture of pelvic

bone and the fact that she was treated as an inpatient for more than a month, towards extra-nourishment a sum of Rs.10,000/- is awarded. Further, the Tribunal has granted a sum of Rs.5,000/- towards pain and suffering. Again, keeping in view, the suffering the claimant had undergone as an inpatient for more than a month, a sum of Rs.15,000/- is granted, as against the sum of Rs.5,000/- granted by the Tribunal under this head. The amount of Rs.46,300/- granted by the Tribunal towards medical expenses is maintained. The Tribunal has granted a sum of Rs.5,000/- towards injuries and the scars. Certainly, the said amount shall be construed on lower side. Therefore, as against the sum of Rs.5,000/-, a sum of Rs.25,000/- is granted towards injuries and the scars. Further, the Tribunal has not granted any amount towards attendant charges. Therefore, @ Rs.2,000/- per month, for a period of 6 months, a sum of Rs.12,000/- is granted towards attendant charges. Towards temporary loss of earnings, though it was claimed that the claimant was doing tailoring work and earning Rs.4,500/- per month, as no evidence is forthcoming to that effect, still, keeping in view that the claimant must be earning Rs.2,000/- per month, for a period of six months, a sum of Rs.12,000/- is granted towards temporary loss of earnings. Thus, the claimant is entitled for a total compensation of Rs.1,28,300/- (Rs.46,300/- + 10,000/- + 5,000/- + 15,000/- + 25,000/- + 15,000/- + 12,000/-) as against the compensation of Rs.75,000/- awarded by the Tribunal, with interest at 7.5% per annum on the enhanced amount, while maintaining interest @ 7.5% per annum granted by the Tribunal on the amount awarded by it, from the date of the petition till the date

of realization.

14. Accordingly, this Civil Miscellaneous Appeal is allowed in part, enhancing the amount of compensation from Rs.75,000/- to Rs.1,28,300/- (Rupees one lakh twenty eight thousand three hundred only) with interest @ 7.5% per annum from the date of the petition till the date of realisation, and the apportionment of the liability ordered by the Tribunal shall remain undisturbed. There shall be no order as to costs.

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

JUSTICE A. SHANKAR NARAYANA

03.02.2016.

Msr

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CIVIL MISCELLANEOUS APPEAL No.3274 of 2005

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