

HON'BLE SMT JUSTICE ANIS

M.A.C.M.A.No.2639 OF 2005

J U D G M E N T:

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 and decree dated 03.11.2004, passed by the Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge, Chittoor, in M.V.O.P.No.317 of 1998, awarding compensation of Rs.40,000/-.

2. The appellant/petitioner represented by her father filed the above Original Petition under Section 166 of the Act claiming compensation of Rs.1,00,000/- on account of the injuries received by her in a motor vehicle accident that occurred on 05.12.1997.

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 the petitioner is studying 5th class in M.P.P. School in Thalapulapalle village. On 05.12.1997, as usual, the minor petitioner was sitting in the class room in her school. The said school is situated adjacent to Thalapulapalle-Kalepalle road. The petitioner was attending the lessons in the classroom on 05.12.1997 at about 12 noon. At that time, the Tractor and Trailor bearing registration Nos.AP.04.T.1311 and AP.04.T.1312 was driven by its driver in a rash and negligent manner in the reverse side and dashed the wall of the class room, in which the petitioner was studying, as a result, the wall fell down on the students, who were sitting in the class room including the minor petitioner. The petitioner sustained grievous injuries due to the fall of the wall and due to the said injuries, she is limping and unable to walk and run normally. Due to the permanent disability, the marriage

prospects of the petitioner were also affected. The petitioner has to suffer disability through out her life. Immediately after the accident, Puthalaput police registered a case in Cr.No.104 of 1997 against the driver of the tractor and trailer and filed the charge sheet into the Court, which was numbered as C.C.No.19 of 1998. According to the petitioner, the accident occurred solely due to the rash and negligent driving of the driver of the tractor and trailer and prayed the Court to grant compensation against both the respondents.

5. The brief averments made in the written statement filed by the first respondent are as follows:

The first respondent put the petitioner to prove the manner of accident, age and income and treatment taken by her and also put the petitioner to prove the permanent disability suffered by her. The first respondent stated that the petition is not maintainable and he has entrusted the tractor and trailer to the driver and the claim is very high; that the tractor is insured with the second respondent and if any amount is payable by the first respondent, it has to be paid by the second respondent and prayed the Court to dismiss the petition.

6. The brief averments made in the written statement filed by the second respondent are as follows:

The second respondent stated that there is no rash and negligence on the part of the driver of the first respondent. Further, the driver, who drove the tractor at the time of accident, is not having valid driving licence. Therefore, the Insurance Company is not liable to compensate the petitioner and finally stated that the compensation claimed by the petitioner is high and excessive and prayed the Court to dismiss the petition.

7. Basing on the above pleadings, the Tribunal framed two issues and to substantiate the claim the petitioner got examined PWs.1 to 4

and got marked Exs.A.1 to A.5 on her behalf. On behalf of the contesting respondents, no oral evidence was adduced but got marked Ex.B1 by consent.

8. After considering the evidence of PW.1 coupled with Exs.A1 & A3, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the tractor and trailer bearing Nos.AP.04.T.1311 and AP.04.T.1312 and awarded compensation of Rs.40,000/- along with interest at 9% p.a.

9. Being not satisfied by the compensation awarded by the Tribunal, the petitioner preferred the present appeal.

10. The learned counsel appearing for the appellant/petitioner argued that though the petitioner received grievous injuries, the Tribunal awarded meagre compensation. Further, the Tribunal has not granted any compensation for the injuries received by the petitioner and medical expenses incurred while undergoing treatment. It is also argued that the petitioner, who was a minor, suffered with disability of 10% and the said fact was also not considered by the Tribunal. Therefore, prayed the Court to enhance the compensation.

11. On the other hand, the learned counsel for the Insurance Company argued that the Tribunal awarded just and reasonable compensation by considering the oral and documentary evidence and the said finding of the Tribunal needs no interference and prayed the Court to dismiss the appeal.

12. Having regard to the submissions made by the learned counsel appearing for both the parties, the points which are to be decided in this appeal are as follows:

1. Whether the compensation awarded by the Tribunal is just and reasonable?

2. Whether the appellant/petitioner is entitled for

enhancement of compensation as prayed for?

13. **POINTS:** A perusal of the evidence of PWs.1 to 4 shows that on 05.12.1997, while the petitioner was attending lessons in her class room, the driver of the tractor and trailer bearing Nos.AP.04.T.1311 and AP.04.T.1312 drove the vehicle on the reverse side in a rash and negligent manner, due to which the vehicle hit the wall of the class room and the wall fell on the students injuring the petitioner. A perusal of the wound certificate shows that the petitioner sustained simple and grievous injuries. The doctors, who treated the petitioner, were examined as PWs.3 & 4. They categorically stated about the injuries received by the petitioner and treatment taken by her. Admittedly, the petitioner suffered two grievous injuries. Therefore, I am of the view that the petitioner is entitled for Rs.20,000/- for grievous injuries she received and the same is awarded. It is no doubt the Tribunal awarded attendant allowance of Rs.3,000/-, compensation under the head of pain and sufferance as Rs.3,000/-, Rs.10,000/- for extra nourishment and Rs.2,000/- for transportation. The said compensation awarded by the Tribunal under the above heads needs no interference and petitioner is entitled for the same. So far as medical expenses are concerned, the petitioner took treatment in the Government Hospital, Chittoor, and as per the evidence of PWs.3 & 4, she suffered simple and grievous injuries. Admittedly, she was admitted in the hospital on 5.12.1997 and discharged on 15.12.1997. Therefore, she was in the hospital for about 11 days. There is no dispute that the treatment in the Government Hospital is free of cost. But, the petitioner must have spent some amount towards medical expenses. Considering the injuries received and period of treatment taken by the petitioner, the petitioner is entitled for Rs.15,000/- towards medical expenses and the same is awarded. Thus, the petitioner is entitled for Rs.75,000/- (Rs.40,000/- + Rs.20,000/- + Rs.15,000/-) as compensation.

14. Accordingly, the appeal is partly allowed enhancing the compensation awarded by the Tribunal from Rs.40,000/- to Rs.75,000/- along with interest at 7.5% p.a on the enhanced amount from the date of appeal till the date of realisation. No order as to costs.

15. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

ANIS, J

Date: 29.01.2016
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