

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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M.A.C.M.A. Nos.657 and 2478 of 2005

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COMMON JUDGMENT:

These two appeals are being disposed of by this common order as they arise out of the award in M.V.O.P.No.218 of 2002 on the file of the Motor Accidents Claims Tribunal-cum-III Additional District Judge, Tirupati.

M.A.C.M.A. No.657 of 2005 was filed by the claimant seeking the enhancement of compensation whereas M.A.C.M.A. No.2478 of 2005 was filed by the Insurance Company challenging the liability.

The claimant in M.V.O.P.No.218 of 2002 filed the claim petition alleging that on 25.02.2002 when she was travelling in Luna bearing registration No.AP-03-1919 as a pillion rider from her house to Tirupati and at about 10.30 A.M. when the said vehicle was proceeding at Peruru cross on Tirupati-Chandragiri road on extreme left side of the road, the driver of hired A.P.S.R.T.C. bus bearing registration No.AP 03 U 2922 drove the same in rash and negligent manner with high speed, lost control over the same and dashed behind the Luna. In the said accident, the driver of Luna fell down and sustained grievous injuries. She also sustained number of injuries. She was shifted to SVRRGG Hospital, Tirupati, and later on shifted to SVIMS Hospital, Tirupati. She was working as a Sweeper in T.T.D. Health Department, Tirupati and earning Rs.5,200/- per month. She claimed an amount of Rs.2,50,000/- for the injuries sustained by her.

Before the Tribunal, respondent No.1 remained *ex parte* and the case was contested by the respondents 2 and 3.

On the basis of the pleadings, the Tribunal framed the

following issues:

- 1) Whether the pleaded accident occurred and if so was it due to the fault of the driver of the bus bearing No.AP 03 U 2922?
- 2) Whether the tractor cum trailer in question belongs to R-1 and stood insured with R-2/insurance company by the date of accident and if so whether policy covers the risk of the petitioner?
- 3) Whether the petitioner suffered injuries and entitled to compensation and if so to what amount and from which of the respondents?
- 4) To what relief?

Before the Tribunal, PWs 1 to 3 were examined and exhibits A1 to A4 were marked. On behalf of the respondents, no oral evidence was adduced, but exhibits B1 and B2 were marked.

On the basis of oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of R.T.C. Bus.

Regarding the injuries sustained by the petitioner, Ex.A3-Wound Certificate was filed, which showed the following injuries:

- (1) Left black eye
- (2) Abrasion of 2 x 1 cm. on right elbow joint
- (3) Abrasion of left elbow (1 x ½)
- (4) Laceration of 3 x 1 cm. over left knee
- (5) Abrasion of 1 x ½ cm. on left loin.

Though the doctor, who issued Ex.A3-Wound Certificate, initially opined that the injuries are simple in nature, as per Ex.A4-case sheet he recorded that the patient was under continuous treatment from 25.02.2002 to 22.04.2002. In support of the injuries sustained by the claimant and the treatment underwent by her, PWs 2 and 3 were examined. As per the evidence of doctor, the claimant sustained 8 fractures to right side ribs and 3 fractures to left side ribs, besides fracture to her pelvis. The age of the claimant as on the date of accident was 47 years and she lost

conjugal life. The Tribunal awarded an amount of Rs.1,50,000/- for the injuries and Rs.10,000/- for extra nourishment as the medical expenses were borne by the T.T.D. Seeking enhancement of the compensation, awarded by award dated 08.12.2004, the present appeal is filed.

A perusal of the award of the Tribunal shows that for 11 rib fractures the amount of Rs.1,10,000/- was awarded and the amount of Rs.40,000/- was awarded for the fracture of pelvis. No amount was awarded for pain and suffering. In view of the nature of injuries, this Court feels that an amount of Rs.40,000/- would be proper for pain and suffering she underwent for the injuries sustained by her in the accident. Apart from the said amount, throughout her life as she lost her conjugal life and must be having inconvenience, this Court feels that an amount of Rs.25,000/- should be awarded for the future discomfort in life. Hence, the award of Tribunal is modified by granting an amount of Rs.1,50,000/-, as awarded by the Tribunal, for injuries, Rs.10,000/- for extra nourishment, as awarded by the Tribunal, Rs.40,000/- towards pain and suffering and Rs.25,000/- for the future discomfort in life. Thus, in all an amount of Rs.2,25,000/- is awarded in place of Rs.1,60,000/-, awarded by the Tribunal. The enhanced amount of compensation shall carry the same rate of interest @ 9% per annum from the date of petition till the date of realisation.

Accordingly, **M.A.C.M.A. No.657 of 2005** is allowed in part.
No order as to costs.

Coming to M.A.C.M.A. No.2478 of 2005, it is an appeal preferred by respondent No.2-Insurance Company in M.V.O.P.No.218 of 2002. The bus, belonging to respondent No.1, was taken on hire by respondent No.3 and it was insured with

respondent No.2. In the award dated 08.12.2004, the petition against respondent No.3-R.T.C. was dismissed.

Learned counsel for the appellant submits that in view of the recent decision of the Supreme Court in **Managing Director, K.S.R.T.C. v. New India Assurance Company Limited**^[1] dated 27.10.2015, the registered owner, insurer as well as K.S.R.T.C. would be liable for the compensation amount jointly and severally.

In view of the above, the award of the Tribunal, dated 08.12.2004, is modified making all the respondents jointly and severally liable to pay the compensation.

In view of the enhancement of compensation made in M.A.C.M.A. No.657 of 2005, the enhanced amount also shall be borne by all the respondents jointly and severally.

Accordingly, **M.A.C.M.A. No.2478 of 2005** is partly allowed.
No order as to costs.

Miscellaneous Petitions, if any, pending in these Appeals shall stand closed.

A.RAMALINGESWARA RAO, J

05.02.2016
MVA

^[1] (2015) 6 ALD 166