

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL No.2098 OF 2004

JUDGMENT:

Having got dissatisfied with the amount of Rs.1,49,054/- granted as compensation by the order and decree dated 21.02.2004 in M.V.O.P. No.1163 of 1999 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Guntur (for short, 'the Tribunal') as against the claim of Rs.5,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the injuries sustained by the appellant-petitioner in a road 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 owner and insurer of private bus bearing registration No.AAG 577, 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 21.06.1999 at about 11-00 a.m., while the petitioner was getting down from the private bus bearing registration No.AAG 577 at

Chinakakani bus stop, Chinakakani, Mangalarigi Rural Mandal, Guntur District, during which time, the driver of the bus moved the same in a rash and negligent manner without observing the petitioner getting down from the bus accounting for her slipping down from the front door of the bus and sustaining injuries by her and she was dragged to a distance of ten feet and later she had fallen from the bus on the road and the injuries she sustained were due to fall from the bus, which were fracture of right superior pubic ramus and fracture of left superior and inferior pubic ramus and other injuries to her person. Claiming that she was an MPTC Member, Kaza village and her family got Acs.6-00 of dry land and she used to assist her husband in agriculture earning Rs.4,000/- per month and she was treated in Dr. Maganti Prasad (Ortho) Nursing Home, Mangalagiri, and then in Nagarjuna Hospital, Kanuru, Vijayawada for better treatment and undergone emergency laparotomy with suturing of laceration wound in vagina and hysterectomy on 21.06.1999 and she spent Rs.1,00,000/- towards medical expenses, sought the aforesaid amount as compensation.

5. Respondent No.1-owner remained *ex parte*. Respondent No.2-insurer strongly opposed the claim by raising various pleas.

6. Basing on the said pleadings, the Tribunal framed the following three issues about the responsibility

for the accident:

- "1. Whether the accident took place due to the rash and negligent driving of the driver of the bus AAG 577?
2. Whether the petitioner is entitled to the compensation, if so, what amount and from whom?
3. To what relief?

and later, recast issue No.2 thus:

"Whether the petitioner is entitled to the compensation, if so, what amount and from which of the respondents?"

7. During enquiry, the petitioner examined herself as P.W.1 besides examining the doctors as P.Ws.2 and 4 to 6 and one Simhadri Nirmala as P.W.3 and marked Exs.A.1 to A.11 to substantiate her claim; whereas, on behalf of respondent No.2, no witnesses were examined, but copy of insurance policy was marked as Ex.B.1 on consent.

8. On appraisal of evidence on record, the Tribunal held issue No.1 in favour of the petitioner; and on issue No.2, having found the injuries sustained by the petitioner and the treatment she had undergone and in the light of the evidence of doctors examined as P.Ws.2 and 4 to 6, granted a sum of Rs.1,49,054/- with interest at 6% per annum from the date of petition till realization.

9. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal has granted meager compensation and, therefore, sought to grant the balance amount of compensation.

10. No representation for the appellant-petitioner and respondent No.2-Insurance Company. So far as respondent No.1-owner is concerned, this Court has observed by the order dated 17.04.2015, that respondent No.1, since remained *ex parte* before the Tribunal, is not a necessary party in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**^[1].

11. Perused the order and the evidence on record, both, oral and documentary let in by the petitioner. Since no appeal is preferred by respondent No.2-Insurance Company, the finding recorded on issue No.1 stands confirmed. Concerning determination of compensation, the Tribunal has granted a sum of Rs.77,053-75 ps covered by Ex.A.5-medical receipt and the same remains undisturbed. However, the Tribunal has granted @ Rs.20,000/- each for three fractures and @ Rs.1,000/- each for two simple injuries. Thus, it appears that the Tribunal has not properly appreciated the evidence on record. No doubt, the disability is shown at 10% and the income of the petitioner as claimed by her is

Rs.4,000/- per month on agriculture, but no evidence appears to have been placed before the Tribunal in that regard. Be that as it may, when kept in view, the evidence of P.Ws.2 and 4 to 6 and the surgical interventions she had undergone and the sufferance she had undergone during the treatment period as inpatient, the amount of Rs.20,000/- granted towards each grievous injury appears to be on lower side. The injuries sustained by the petitioner are as follows:

- "(1) Loss of Gluteal Muscles and thigh Muscles left side.
- (2) Fracture both pubic rami left side.
- (3) Fracture superior pubic rami right side. Both left and right pubic rami united.
- (4) Patient is having Musculo skeletal disability like abduction mechanism was lost.
- (5) Patient is limping on the right lower limb.
- (6) Unstable gait on the left side.
- (7) Loss of mobility of the abductors on left hip joint on left side as a result the functional disability is 20% which is permanent."

Therefore, the same is enhanced to Rs.30,000/- each for three fractures as against Rs.20,000/- granted by the Tribunal. When kept in view, the observations of P.W.6 where even the gait of the petitioner was unstable on the left side and she lost mobility of the abductor on the hip joint left side and accounted for functional disability at 20%, certainly, a sum of Rs.50,000/- is granted. No amount is granted by the Tribunal towards pain and suffering. Therefore, a sum of Rs.30,000/- is granted

keeping in view, that there have been surgical interventions even to the other injuries sustained on her person. Towards extra nourishment, no amount is granted by the Tribunal. Therefore, a sum of Rs.15,000/- is granted under the said head. No amount is granted by the Tribunal towards attendant charges. Therefore, a sum of Rs.10,000/- is granted under the said head keeping in view, that the petitioner must have been disabled to do her normal activities atleast for five months. Towards transport charges, a sum of Rs.5,000/- is granted, since no amount was granted by the Tribunal under this head. This apart, towards two simple injuries, the amount of Rs.1,000/- each granted by the Tribunal is enhanced to Rs.3,000/- each.

12. Thus, the petitioner is entitled to a total sum of Rs.2,53,054/- (Rupees two lakh fifty three thousand and fifty four) as against Rs.1,49,054/- 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 6% per annum and the same is enhanced to 7.5% per annum on the entire amount of compensation from the date of petition till realization in view of the decision of the Hon'ble Apex Court in **Rajesh and others Vs. Rajbir Singh and others**^[2].

13. Accordingly, the instant appeal is allowed in part 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

29th February, 2016

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[\[1\]](#) 2001(1) ALT 495 (D.B.)

[\[2\]](#) 2013 ACJ 1403