

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No.11 OF 2006

Date: 27.10.2016

Between:

Jarpula Sunitha, D/o. Somla, aged 10 years,
R/o. Jarpula Thanda, H/o. Arkapally Village of
Madgula Mandal, Mahabubnagar District.
(Petitioner being minor rep. by her natural father
and guardian Jarpula Somla, S/o. Enktya Naik,
aged about 50 years.

... Appellant

And

1. Nagilla Ramulu
2. The New India Assurance Company Limited,
rep. by its Manager, Branch Office:
Sanghamjitra Bank Complex, Prakasham Bazar,
Nalgonda Town.

... Respondents

(Dismissed for default vide court order
against R-1)



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JUDGMENT:

The claimant filed this appeal having been aggrieved by the common order/Award of the Motor Vehicle Accidents Claims Tribunal-cum-IV Additional District Judge, II F.T.C.), Nalgonda (for short, 'the Tribunal') in O.P.Nos.1153, 1156 and 1157 of 2003 dated 27.05.2005. O.P. No.1153 of 2003 was under challenge before this Court wherein the Tribunal awarded compensation of Rs.25,000/- with interest at 8% per annum from the date of petition i.e., 23.12.2003 till the date of award and at 6% p.a. from the date of award till the date of deposit or realization, as against the claim of the claimant of Rs.1,50,000/-, in the claim petition under Section 166 and Rule 455 of A.P.M.V. Rules, 1989 read with Section 140 of the Motor Vehicles Act, 1988.

Heard the learned counsel for the respondent No.2 – Insurance Company and perused the material available on record.

The parties hereinafter are referred to as arrayed before the Tribunal below for the sake of convenience in the appeal.

The brief facts of the case are as follows:

The case of the claimants is that on 25.5.2003 while the claimants were travelling in an auto bearing No.AP-24-TR-5366 from Venkatampeta to Vinjamur, the auto being driven by its driver in a rash and negligent manner at high speed and unable to control the steering when they reached the outskirts of Kokkerala village and thereby the auto turned turtle. As a result of which, the claimants sustained injuries and one Jarpula Nazi died in the said accident. The Police, Chinthapally PS

registered a case in Cr.No.44/2003 under Sections 304-A and 337 of IPC.

The respondent No.1, owner of the crime vehicle, is remained *ex parte* and respondent No.2, being the insurer of the crime vehicle, in all OPs filed separate counters in all OPs. denying the date, place and time of the accident and involvement of the vehicle alleged in the petition. The nature of the injuries sustained by the claimants and death of the deceased are also denied and prayed to dismiss the petitions.

Basing on the above pleadings, the Tribunal below framed the following issues:

(1) Whether the accident had occurred due to rash and negligent driving by the driver of auto bearing No.AP-24-TR-5366 and whether the petitioners have sustained injuries and the deceased Jarpula Nazi died in the said accident?

(2) Whether the petitioners are entitled for any compensation, if so, to what amount and by whom?

(3) To what relief?

The only point that arise for consideration is whether the compensation of Rs.25,000/- awarded by the Tribunal is reasonable, just and fair.

In support of their claim, they got examined P.Ws.1 to 4 and also got marked Ex.A1 to A6. No oral evidence is adduced on behalf of the respondent No.2/Insurance Company, but marked Ex.B1 - attested copy of Insurance policy of the crime vehicle.

The father of the claimant has filed O.P.No.1153 of 2003 as she is minor, aged about 10 years, claimed compensation of Rs.1,50,000/- for

the injuries sustained by her in the said accident. After considering the oral and documentary evidence available on record, the Tribunal below held that the accident took place due to rash and negligent driving of the Auto bearing No.AP-24-TR-5366 and by treating the injuries sustained by the claimant i.e., and awarded compensation of Rs.13,000/- for two grievous injuries; Rs.3,000/- for two simple injuries; Rs.5,000/- towards medical expenses, attendance, transportation and extra nourishment; and Rs.4,000/- towards loss of expectation of life, loss of amenities and loss of pleasure, thus totalling to Rs.25,000/-. Not being satisfied with the quantum of compensation, the claimant preferred the present appeal.

The learned counsel for the appellant is not present and no representation on his behalf. Learned counsel for the respondent No.2 - Insurance Company is present and advanced his arguments.

As could be seen from the grounds of appeal, the daughter of claimant became permanently disabled due to the injuries received in the said accident and the tribunal has not awarded compensation of Rs.1,50,000/- as claimed by her and therefore sought for enhancement of compensation.

Learned counsel for the respondent No.2 - Insurance Company, while referring to para-8 in the common order of the tribunal submitted that the appellant has filed Ex.A6 - certified copy of medical certificate which shows that the claimant sustained two grievous injuries i.e., fracture of right patella, fracture of right tibia and also two simple injuries which are abrasions over left little toe and on right thigh. Learned counsel further submitted that the claimant has not filed any disability certificate before the tribunal and the same has been observed by the Tribunal in para-8 of the common order.

However, considering the arguments advanced by the learned counsel for the respondent No.2-Insurance Company, I concur with the findings of the Tribunal on the disability suffered by the daughter of the claimant. As a matter of fact, no disability certificate has been filed by the claimant to prove that she has suffered any disability. Unless disability certificate is filed, it is not possible to assess the percentage of disability suffered by her. Therefore, I do not see any valid reason to the extent of the award of the tribunal in this regard.

The Tribunal erred in awarding a paltry sum of Rs.13,000/- (Rupees Thirteen thousand only) for two grievous and simple injuries which in my view needs to be enhanced. Accordingly, a sum of Rs.30,000/- (Rupees Thirty thousand only) shall be awarded as against Rs.13,000/- (Rupees Thirteen thousand only) towards two grievous injuries sustained by the claimant, which would be appropriate and it would meet the ends of justice, and a sum of Rs.10,000/- (Rupees Ten thousand only) shall be awarded as against Rs.3,000/- (Rupees Three thousand only) towards two simple injuries. Since the averment to the effect that the claimant was unable to walk specifically even as per the evidence of P.W.1, as observed by the Tribunal, a sum of Rs.10,000/- (Rupees Ten thousand only) is awarded towards pain and suffering. An additional amount of Rs.6,000/- (Rupees Six thousand only) is awarded in addition to Rs.4,000/- (Rupees Four thousand only) towards extra nourishment.

In the result, the Appeal is allowed in part, with costs. The compensation of Rs.25,000/- (Rupees Twenty Five thousand only) as awarded by the Tribunal in O.P.No.1153 of 2003 is enhanced to Rs.65,000/- (Rupees Sixty five thousand only) with interest at 7.5% per annum from the date of claim petition till the date of realization against

both the respondents with joint and several liability. Rest of the terms of the award of the Tribunal holds good.

Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

G. Shyam Prasad, J

Date: 27.10.2016
GBS

