

HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A.M.P.NO.987 of 2016

IN/AND

M.A.C.M.A. No. 197 of 2010

COMMON JUDGMENT:

M.A.C.M.A.M.P.No.987 of 2016 is filed by the petitioner/claimant to permit her to amend the provision of law in claim petition i.e. MVOPNo.416 of 2007 on the file of Chairman-MACT-cum-III Additional District Judge, Tirupathi as Section 166 of Motor Vehicles Act (for short 'the Act') instead of Section 163-A of the Act.

2. M.A.C.M.A.No.197 of 2010 is arising out of the order dated 27.01.2009 passed in MVOP No.416 of 2007 by the Chairman, Motor Vehicle Accident Claims Tribunal-cum- District Judge, Tirupathi (for short, 'the Tribunal').

3. The appellant herein in M.A.C.M.A.No.197 of 2010 is the National Insurance Company and 2nd respondent before the Tribunal. 1st respondent is the claimant, 2nd respondent is the owner of the milk van and the 3rd respondent is the A.P.S.R.T.C. in the present appeal.

4. M.V.O.P.No.416 of 2007 was filed under Section 163-A of the Act, 1988 claiming compensation of Rs.6,50,000/- on account of the injuries sustained by the claimant-A.R. Suguna in a motor accident that took place on 10.01.2005.

5. The brief facts of the case are that the claimant was traveling in A.P.S.R.T.C. bus bearing No. AP-11-Z-629 on 10.01.2005 and when the bus reached Subba Naidu kandriga crossroad at 12 noon, a milk van bearing No.TN-20-T-9793 came in the opposite direction and on account of the rash and negligent driving of those vehicles, the accident occurred, as a result of which the claimant sustained multiple bleeding injuries and

fractures. Some of the passengers in the bus died as a result of the said accident. The Station House Officer, Nagalapuram Police Station registered a case in Cr.No.43 of 2005 for the offences punishable under Sections 304-A, 337 and 338 of IPC against the driver of the van. C.C.No.30 of 2006 numbered and was pending before the learned Judicial Magistrate of First Class, Sathyavedu by the date of the judgment passed by the Tribunal.

6. In the said accident, the claimant has lost 20 upper and lower teeth. She was unable to continue her tailoring work and became unfit to be a housewife. She suffered loss of earnings due to the injuries suffered by her in the accident. She was treated at various hospitals like Sathyavedu Government Hospital, SVRRGG Hospital, Tirupathi, and Sri Rama Devi Multi Super Speciality Hospital, Tirupathi where she underwent two surgeries and was treated as inpatient from 11.12.2005 to 12.01.2006. She was again admitted in the hospital on 3.3.2006 and discharged on 21.03.2006 and she underwent surgery. She was treated by Dr.D.B.Sasidhar Reddy, an Orthopaedic Surgeon and she incurred an amount of Rs.3 lakhs towards medicines and treatment.

7. First respondent remained *ex parte*. Second respondent-insurance Company filed written statement denying its liability and taken a plea that the accident occurred due to head on collision between the van and the bus. The driver of the bus was not negligent. The driver of the van was not holding a valid driving licence and the van had no permit. The injuries sustained by the claimant are simple in nature and she has not suffered any disability.

8. The 3rd respondent-A.P.S.R.T.C. filed counter denying its negligence and attributing negligence to the driver of the first respondent.

9. The Tribunal on a consideration of the evidence of injured PW-1, PW-2 (the trainer of PW-1 in tailoring work and she spoke about the earnings of PW-1) and PWs.3 to 5, the Medical Officers, who treated the claimant and Exs:A-1 to A-18 marked on behalf of the claimant, and Ex.B-1 the true copy of the insurance policy marked on behalf of the respondents, has awarded compensation of Rs.3,59,474/-.

10. The points that arise for consideration are:

i) Whether there is contributory negligence on the part of the driver of the A.P.S.R.T.C. bus?

ii) Whether the compensation claimed by the Tribunal is excessive in view of the provision under Section 163-A of Motor Vehicles Act?

iii) Whether the Tribunal has awarded excessive compensation of Rs.3,59,474/- incurred towards medical expenditure?

11. The learned counsel appearing for the appellant contended that this is a case of head on collision between the milk van and the A.P.S.R.T.C. bus. The Tribunal has fixed the liability only against the insurer of the milk van exonerating the liability of the driver of the A.P.S.R.T.C. bus. PW-1 is injured eyewitness to the accident. She stated in her chief examination that the accident occurred due to the rash and negligent driving of both the drivers of milk van and A.P.R.T.C. bus. The Tribunal ignoring the evidence of PW-1 and placing reliance on Ex.A-2 charge sheet has come to the wrong conclusion that the accident occurred only due to the rash and negligent driving of the driver of the milk van.

12. Learned counsel for the appellant submitted that the Tribunal has clearly observed in para 10 of its judgment about the rash and negligent driving of the driver of the milk van. The learned counsel for the appellant referred to para 10 of the judgment, which reads as under:

“The claimant is examined as PW-1 and she relies upon Ex.A-1 certified copy of F.I.R., and Ex.A-2 certified copy of charge sheet. PW-1 has categorically stated in her chief affidavit that the accident arose on account of the negligence of the drivers of both the vehicles. In cross-examination, she admits that she was sitting behind the driver in the third row on the right side of the bus. She admits that Ex.A-2 charge sheet is laid against the driver of the van. The driver of the van is not examined. The contesting second and third respondents have not taken any steps to examine the driver of both the vehicles. Though it is contended by the second respondent that police registered a false case, it has not taken any steps to examine any person to substantiate the same. It has also not appointed any investigator to ascertain/find out the negligence. The third respondent has also not examined its driver to prove that the third respondent's driver was negligent. In such circumstances, it is necessary to take resort to Ex.A-2 which was laid by the police against the first respondent's driver after making the investigation.”

13. It is submitted by the learned counsel for the appellant that the driver of the van is not examined. The contesting 2nd and 3rd respondents have not taken any steps to examine the drivers of both the vehicles to prove the rash and negligent act which resulted in the accident. It is further submitted that the 2nd and 3rd respondents have not taken any steps to examine any person to substantiate their claim. The police registered a false case against the driver of the van alone leaving the driver of the A.P.S.R.T.C. bus.

14. It is obvious from the observations of the Tribunal in para 10 of its judgment that the second respondent-insurance company has not taken any steps to prove that the accident has occurred due to the rash and negligent driving of the driver of the A.P.S.R.T.C. bus. The driver of the A.P.S.R.T.C. has not been examined as witness to prove that the accident

occurred in the manner stated above. The insurance company also did not appoint any investigator to ascertain the rash and negligent act on the part of the driver of the A.P.S.R.T.C. bus. The Tribunal has rightly placed reliance on Ex.A-2 the charge sheet filed by the police which clearly reveals that the accident has occurred due to the rash and negligent driving of the first respondent herein. The Tribunal also placed reliance on a decision reported in MALLAMMA v. BALAJI AND OTHERS¹ wherein it was held that filing of the charge sheet is prima facie to hold driver responsible for the accident. No doubt, PW-1 had stated in her chief examination that the accident occurred on account of the negligence of the drivers of both the vehicles. The Tribunal has properly appreciated the evidence of PW-1 by taking into consideration the charge sheet Ex.A-2 which clearly reveals that the police have registered the case against the driver of the van and came to the conclusion that the driver of the van has driven the van in a rash and negligent manner and responsible for the accident. Hence, I do not see any valid reasons to interfere with the finding of the Tribunal.

15. Learned counsel for the appellant submits that the claimant has filed the petition before the Tribunal under Section 163-A of Act and the Tribunal without considering the fact has awarded compensation as if the petition was filed under Section 166 of the Act. Therefore, the award passed by the Tribunal is highly excessive and the amounts awarded by the Tribunal are exceeding the amounts shown in Schedule II of the Motor Vehicles Act.

16. The learned counsel for the claimant submits that the claimant has filed the petition in MACMAMP No.987 of 2016 in this appeal for converting the provision under Section 163-A of the Act into Section 166 of the Act. It is contended that though the claimant due to lack of

¹ 2003 (2) AIR 1

knowledge filed the petition under Section 163-A of the Act before the Tribunal, the entire evidence was led and the Tribunal has also taken into consideration and decided the matter as if the petition was filed under Section 166 of the Act. Therefore, sought for allowing the petition filed in this appeal for conversion or provision under Section 163-A of the Act into Section 166 of the Act.

17. The procedure is hand maid of justice. While dispensing the justice, the procedure should not come in the way of awarding just compensation. The Motor Vehicles Act is a beneficial legislation. The claimant due to ignorance filed petition under Section 163-A of the Act at the first instance before the Tribunal and subsequently realized that the appropriate provision is under Section 166 of the Act and filed a petition for amendment. No doubt, it is a belated petition. But, the delay cannot defeat the justice. Therefore, though there is delay of few years, in view of the fact that the entire trial conducted before the Tribunal, and the Tribunal has also considering the evidence as if the petition was filed under Section 166 of the Act, there is every reason to allow this petition. Therefore, the petition filed by the claimant to convert the provision from Section 163-A of Act to Section 166 of the Act is allowed.

18. The learned counsel for the appellant lastly contended that the Tribunal has awarded excessive compensation under the head medical treatment and expenditure. It is submitted that the medical treatment and the medical expenditure is not proved by examining proper witnesses who issued the medical certificates and who have treated the claimant. As a matter of fact, there is ample evidence on record to show that the medical bills, and the discharge summary have been certified by the medical officers which reflects in para 26 of the judgment of the Tribunal which reads as under:

“PW-1 also claimed Rs.10,000/- for transport to hospital, Rs.3,00,000/- for extra nourishment, medicines and Rs.300/- for damages to clothes under the head of special damages. According to PW-1 she spent Rs.3,00,000/- for medicines and treatment by the date of filing of the petition. She relied upon Ex.A-5 a bunch of 35 medical bills for Rs.1,51,383/-. Ex.A-6 discharge bill for Rs.1,42,680/- and Ex.A-14 a bunch of 23 bills for Rs.65,951.17 ps. PW-3 testified Ex.A-5 and A-6 and PW-5 testified Ex.A-14 bills except item No.1 thereof. PW-1 is therefore, entitled to Rs.65,411/- (Rs.65,951/-, Rs.540/- (item No.1) = Rs.65411/-). PW-1 is therefore, entitled to Rs.3,59,474/- (Rs.1,51,383+Rs.1,42,680/- +Rs.65,411/- = Rs.3,59,474/-) for medicines and treatment.”

19. The Tribunal has rightly appreciated the evidence on record and arrived at a conclusion that the claimant is entitled for expenditure for medicines and treatment of Rs.3,59,474/- and this finding does not require any interference.

20. Learned counsel for the respondents submitted that this is a case of accident in which the claimant lost 20 upper and lower teeth. She was unable to continue her tailoring work and became unfit to be a housewife. She suffered loss of earnings due to the injuries suffered by her in the accident. The claimant was treated at various hospitals and she underwent two surgeries and was treated as inpatient from 11.12.2005 to 12.01.2006. She was again admitted in the hospital on 3.3.2006 and discharged on 21.03.2006 and she underwent surgery. She was treated as inpatient for about 101 days and she had suffered permanent disability because of the loss of teeth. It is further submitted that the functional disability also has to be taken into consideration. While awarding the compensation, the Tribunal has rightly taken the functional disability into consideration and awarded just compensation and it does not require any interference.

21. It is pertinent to note that in the said accident apart from the claimant who received injuries, some other persons died. The persons who died in the accident have preferred M.V.O.P.No.428 of 2006. The copy of the judgment is marked as Ex.A.-18 before the Tribunal and as against that O.P., an appeal has been preferred in MACMA No.2447 of 2009 before this Court and this Court held the liability of the Tribunal of the van for his rash and negligent act. In view of the findings of this Court with regard to the rash and negligent act, which is recorded in the above said MACMA, this Court is not inclined to set aside the findings, as they are in accordance with law, about the rash and negligent act on the part of the driver of the van.

22. Having regard to the facts and circumstances of the case, there are no valid grounds to interfere with the findings of the Tribunal in awarding compensation in the original petition.

23. In the result, M.A.C.M.A.M.P.NO.987 of 2016 is allowed as prayed for and M.A.C.M.A.No.197 of 2010 is dismissed confirming the judgment of the Tribunal passed in MV OPNo.416 of 2007. There shall be no order as to costs.

. As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed. No order as to costs.

G. SHYAM PRASAD, J

Date:27.01.2017.
ccm

HON'BLE SRI JUSTICE G. SHYAM PRASAD



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