

HON'BLE SRI JUSTICE M.S.K.JAI SWAL

M.A.C.M.A.No.1122 of 2010

JUDGMENT:

This appeal is filed by the appellant – claimant in M.V.O.P.No.1345 of 2006, against the award dated 23.10.2009 passed by the Chairman, Motor Accident Claims Tribunal-cum-District & Sessions Judge, Ranga Reddy District at L.B.Nagar, Hyderabad (for short “the Tribunal”), seeking enhancement of compensation.

The appellant filed the claim petition claiming a compensation of Rs.3,00,000/- for the injuries sustained by her in a motor accident that occurred on 06.11.2006. While the claimant was travelling in a RTC Bus bearing registration No.10Z-7830 to go to Shapurnagar, and when the bus reached IDPL colony cross roads of Srinivasanagar, as there was crowd of passengers, the driver of the bus asked the appellant to get down the bus enabling the other passengers to get down the bus, and when she was trying to board the bus, the driver of the bus suddenly moved the bus and jerked with high speed and due to which, the appellant fell down and the front wheel of the bus ran over the left leg of the appellant, and due to the impact, the appellant sustained crush injuries on her left foot, lacerated injuries on her back and abrasions over the face and she was shifted to Gandhi Hospital for treatment.

The respondent/RTC filed counter denying the averments of the claim petition and mode of the accident. The respondent stated that the appellant might have suffered injuries due to the accident with any other vehicle but not with the RTC Bus, and the appellant involved the vehicle of the respondent Corporation with a view to claim compensation.

Basing on the above pleadings, the Tribunal framed the following issues for trial:

- 1) Whether the petitioner sustained injuries in a motor vehicle accident occurred on 06-11-2006 due to rash and negligent driving of APSRTC bus bearing No.AP10A-7830, by its driver?
- 2) Whether the petitioner is entitled to claim compensation and if so, how much amount and from which of the respondents?
- 3) To what relief?

The appellant/claimant herself was examined as P.W.1 and the doctor who treated her was examined as P.W.2 and Exs.A1 to A8 were got marked. On behalf of the respondent, no oral or documentary evidence was adduced.

The Tribunal after considering the evidence on record, held that the accident occurred due to rash and negligent driving of the driver of the RTC Bus. The Tribunal, on consideration of the oral and documentary evidence, has awarded compensation of Rs.2,77,200/- as against the claim of Rs.3,00,000/-. Questioning the said award, the appellant-claimant filed this appeal seeking enhancement.

The fact that is proved from the oral and documentary evidence produced and adduced on behalf of the appellant is that on the fateful day, there was an accident in which her left leg was injured and it resulted in amputation of four fingers of the left leg, due to which she suffered permanent disability, loss of earnings and considerable pain and suffering. Though the appellant claims that she was working as Arabic Teacher and earning by way of doing tailoring work in the leisure time, the Court has not taken into consideration the same on the ground that absolutely neither oral nor documentary evidence was produced by the

appellant to substantiate her claim that she was working as Arabic Teacher and also earning some amount by doing tailoring work. In the absence of there being any iota of evidence, the Tribunal has refused to accept the contention of the appellant insofar as her income is concerned. The appellant being a housewife, aged about 28 years, her notional income was taken into consideration at Rs.3,000/- per month and after applying the multiplier of 18, the total loss was determined at Rs.6,48,000/-. However, since the medical certificate – Ex.A8 which is issued by the competent authority shows that the appellant suffered a disability to an extent of 40%, the Court has adopted the applicable formula and determined the total loss of future earnings at Rs.2,59,200/-. The method and procedure adopted by the learned Tribunal cannot be said to be in any way erroneous. However, the learned Counsel appearing for the appellant submits that the Court has not taken into consideration the loss of future prospects and the disability ought to have been taken at 100%, but the learned Counsel could not show any material on record in support of his contention that the appellant/injured was disable to an extent of 100%. As already stated, the accident resulted in amputation of four fingers of her left leg and it did not cause any permanent disability insofar as her future earnings are concerned. Even if what the appellant claims to be true that she was working as Arabic Teacher, the disability which the appellant suffered due to the accident, cannot be taken as any hindrance to continue her avocation.

The Tribunal has awarded a further sum of Rs.1,000/- towards transport to hospital and Rs.12,000/- towards extra nourishment, medical treatment and attendant charges and also Rs.5,000/- towards pain and suffering. Admittedly, the appellant/injured was immediately taken to

Gandhi Hospital, which is a Government Hospital, and was treated there for about a month and she admits in her evidence that she was discharged from the hospital after she was permanently cured. Learned Counsel submits that there is a need for her future medication and hence additional amount ought to have awarded. There is no material on record to show that the appellant needs future treatment for the injuries which she sustained.

The Tribunal has however awarded Rs.5,000/- towards pain and suffering. This amount seems to be slightly disproportionate for the reason that the accident has resulted in crush injury to the left leg which ultimately resulted in amputation of four fingers. She was in the hospital for about a month. Therefore, the pain and suffering which the appellant suffered appears to be more and therefore the Court ought to have awarded at least Rs.25,000/- towards pain and suffering instead of Rs.5,000/-.

With regard to the other charges claimed, the Tribunal has appreciated the material on record in proper perspective and awarded the compensation under different heads which do not warrant any interference. Only to the extent of enhancing the compensation under the head of pain and suffering from Rs.5,000/- to Rs.25,000/-, the rest of the claims, as put forth by the appellant, cannot be considered.

In the result, the appeal is partly allowed enhancing the compensation from Rs.2,77,200/- to Rs.2,97,200/- together with interest thereon at 7.5% per annum from the date of accident till realization. As and when the amount is deposited, the appellant is entitled to withdraw the same.

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

M.S.K.Jaiswal, J

6th June, 2017

Dsr/ smr

