

THE HON'BLE Ms. JUSTICE J.UMA DEVI

M.A.C.M.A.No.2599 of 2005

JUDGMENT:

Having been aggrieved by the order, dated 28.06.2005, passed in O.P.No.163 of 2004 by the Chairman, Motor Vehicles Accident Claims Tribunal – cum – II Additional District Judge, Karimnagar at Jagtial, ('the Tribunal', for brevity), the claimant in the above mentioned O.P. preferred the present appeal contending that no reasonable or fair compensation is awarded to him by the Tribunal even after establishment of receiving of several fracture injuries in the accident dated 04.06.2003 due to which she was disabled.

2. The appellant is the petitioner/claimant. First respondent is the driver of the offending bus bearing registration No.AP-11-Z-1858. The second respondent is the owner of the offending vehicle/APSRTC. For the sake of convenience, the parties hereinafter will be referred as petitioner and respondents, as they are arrayed in O.P.No.163 of 2004.

3. The facts of the case are briefly stated as follows:-

That on 04.06.2003 at about 04:15 AM, while the petitioner was proceeding in the bus bearing registration No.AP-11-Z-1858 belonging to the respondent Corporation from Tirumala hills to Tirupati along with his wife and children, when the bus reached near 52nd turning of first ghat, the bus was driven by its driver in a rash and negligent way with high speed, as a result of it, the bus was hit to safety wall of the hill and fell in a valley. In the above accident, the daughter of the

petitioner died on the spot and the petitioner sustained fracture injuries to 2nd to 5th ribs, right hip joint, abdomen, right shoulder, apart from injuries all over her body. The Traffic Police of Tirumala, registered a case in Crime No.22 of 2003 against the driver of the offending bus for the offences punishable under Sections 304-A, 337, 338 and 279 IPC. Soon after the accident, the petitioner was taken to S.V.R.R.G.G. Hospital, Tirupati, and there she took treatment for fifteen days and from there, she was taken to Balaji Institute of Surgical Research and Rehabilitation Centre for Disabled, Tirupati. Prior to the accident, the petitioner was running a Kirana and Bangle Store at Jagtial and was getting income of Rs.5,000/- per month and because of the injuries she sustained in the accident, her business was badly affected and her family members were put to great hardship and that she incurred a sum of Rs.5,000/- towards medical treatment. The petitioner filed a claim petition under Section 166 (1) (a) of the Motor Vehicles Act, 1988, before the Tribunal claiming compensation of Rs.2,00,000/- as she became incapacitated on account of several fracture injuries sustained in the accident dated 04.06.2003.

4. The driver of the bus had not contested the case. The case was contested by the management of the APSRTC by filing an elaborate counter contending that the bus was driven very slowly by its driver at the relevant point of time and there was no negligence as such in driving of the bus by its driver and that the accident occurred due to failure of brakes etc. The 2nd respondent disputed the age, income,

period of treatment and contended that the amount claimed by the petitioner towards compensation is excessive.

5. Based on the above material pleadings, the Tribunal framed the following issues for trial:-

1. Whether the accident had occurred due to rash and negligent driving of the vehicle bearing No.AP 11 Z 1858 by its driver?
2. Whether the petitioner is entitled for compensation, if so, to what amount and from whom?
3. To what relief.

6. During the course of enquiry, the petitioner was examined as P.W.1, and Exs.A.1 to A.11 were marked. No oral and documentary evidence was adduced by the 2nd respondent.

7. On issue No.1, the Tribunal gave its finding that the accident took place due to rash and negligent driving of the driver of the bus and this finding was recorded on overall appreciation of evidence on record. The said finding of the Tribunal was challenged and no appeal or cross appeal was filed by the 2nd respondent. The claimant in the above O.P. alone had filed the appeal challenging the award passed by the Tribunal contending that the compensation awarded by the Tribunal is not fair and reasonable.

8. It was contended by the learned counsel appearing for the appellant that the Tribunal erred in granting meagre amount of Rs.25,000/- towards pain and suffering. His contention was that though the evidence on record was clear and categoric so far as

receiving several fracture injuries by the petitioner, the Tribunal awarded less compensation to her. Despite the establishment of the treatment taken by her as an in-patient for a considerable period, no amount was awarded towards attendant charges, extra nourishment and towards loss of earnings etc. Since the Tribunal failed to appreciate the evidence on record in a proper perspective, great injustice was caused to the petitioner and the same could be cured by passing an appropriate and reasonable award on re-appreciation of evidence.

9. *Per contra*, learned standing counsel for the APSRTC representing the second respondent would submit that the Tribunal had appreciated the evidence on record in a proper perspective and passed a reasoned order.

10. The only point that arises for consideration in the instant case is whether reasonable and fair compensation is awarded by the Tribunal.

11. I have perused the entire material available in the case. It is evident from the Wound Certificate of the petitioner that she sustained fracture injuries to four ribs on right side, apart from a fracture to the right hip joint and for the said fracture injuries, she took treatment as an in-patient at S.V.R.R.G.G. Hospital, Tirupati, for fifteen days and for further considerable period in Balaji Institute of Surgical Research and Rehabilitation for Disabled, Tirupati, where she is taken for further treatment. Ex.A.11 is the Follow up card issued by Balaji Institute of Surgical Research and Rehabilitation for Disabled, Tirupati, which is

issued in respect of injury No.1. Though the petitioner has not examined any medical expert to speak about the injuries sustained by her, the documentary evidence available in the case, particularly Ex.A.3 – Wound Certificate and Ex.A.11 – Follow up Card, clinchingly establishes the fact that the petitioner sustained fractures to right hip joint and fractures to four ribs on the right side and for getting the above injuries treated, she was in hospital etc. Thus, a sum of Rs.25,000/- was awarded by the Tribunal towards pain and suffering. The pain and agony she was put to suffer on account of the aforementioned fracture injuries cannot be compensated in any way. However, this Court is of the view that awarding an amount of Rs.50,000/- towards pain and suffering is just and reasonable.

12. The Tribunal appeared to have awarded an amount of Rs.5,000/- to each of the fracture injuries sustained by the petitioner to four ribs on right side, without taking into consideration of the trauma or suffering she has faced due to such injuries. Considering the agony or hardship she is put to suffer, this Court feels that it is appropriate to award a sum of Rs.15,000/- for each rib fracture injury and, accordingly, a total sum of Rs.60,000/- (Rs.15,000 x 4) is awarded in respect of fracture injuries to four ribs on right side.

13. The Tribunal appeared to have awarded an amount of Rs.6,000/- towards transportation charges. The petitioner is the resident of Govindupalli village of Jagtial Mandal. While she was on pilgrimage, she met with road accident. On account of fracture injuries, she was forced to stay away from her village for more than 15

to 20 days and later, she was constrained to take treatment in a Rehabilitation Centre for disabled and attended for treatment as advised by medical experts by undertaking long journey from her village to Tirupati. But these facts, borne by record, was not properly appreciated by the Tribunal while awarding compensation under the head of transportation charges. Considering the above mentioned aspect, this Court is of the view that awarding an amount of Rs.10,000/- under the head of transportation charges is just and reasonable.

14. The fact which is not denied by the other side is that the petitioner was in S.V.R.R.G.G. Hospital, Tirupati, for fifteen days and from there, she was shifted to Balaji Institute of Surgical Research and Rehabilitation for Disabled, Tirupati. Though Exs.A.3 and A.11 establish the above mentioned facts, no amount is awarded under the head of extra nourishment. Hence, a sum of Rs.3,000/- is awarded under the head of extra nourishment.

15. The Tribunal recorded a finding that the petitioner was running a Kirana and Bangle Store at Govindupalli village of Jagtial Mandal, Karimnagar District. Due to her involvement in a road accident, she could not able to attend to her business for more than four months and accordingly awarded an amount of Rs.6,000/- towards loss of earnings. Since the compensation awarded under the head of loss of earnings appears to be fair and reasonable, this Court finds no valid or substantial material to take the other view so far as the compensation awarded under the head of loss of earnings.

16. Since the compensation amount of Rs.20,665/- awarded under the head of medical expenditure is fair and reasonable, the same is hereby affirmed.

17. The petitioner/claimant is entitled to get total compensation of Rs.1,49,665/- (Rs.50,000/- + Rs.60,000/- + Rs.10,000/- + Rs.3,000/- + Rs.6,000/- + Rs.20,665/-), and the same is made as a round figure of Rs.1,50,000/- (Rupees One thousand Fifty Thousand only).

18. Accordingly, the appeal is allowed in part, enhancing the compensation from Rs.82,000/- to Rs.1,50,000/-. In view of the settled legal preposition laid down in the case of Rajesh and others Vs. Rajbir Singh and others¹, the rate of interest is reduced to 7.5% per annum from 9% per annum. The compensation amount of Rs.1,50,000/- is payable by the 2nd respondent – APSRTC to the petitioner together with interest at the rate of 7.5% per annum from the date of the petition till realization. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this appeal, shall stand closed.

JUSTICE J.UMA DEVI

22nd March, 2017.
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¹ (2013) 9 SCC 54