

THE HON'BLE MRS. JUSTICE ANIS

MA CMA NO. 4736 of 2008

JUDGMENT:

This appeal is filed by the petitioner/claimant/appellant under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 22.4.2004, passed by the V-Additional District Judge-cum-Chairman, Motor Accident Claims Tribunal, Nizamabad in M.V.O.P.No. 990 of 2000, awarding compensation of Rs.4,000/- and seeking enhancement of compensation amount.

2. The petitioner/appellant filed the above O.P. under Section 166 of the Act, claiming compensation of Rs.1,00,000/- on account of the injuries sustained by her in a motor vehicle accident.

3. The brief averments of the **claim** petition are as follows,

The petitioner/appellant stated that she is a resident of Naka Thanda, Nizamabad district. On 11.9.1997 while the petitioner along with others was returning from fields to their houses on the left side of the road and when they reached near Hanman temple at Nakathanda at about 7.30 P.M., a lorry bearing No. MP-06-E-0521, driven by its driver, was coming from Nagpur side towards Hyderabad, in a rash and negligent manner at high speed and dashed against the petitioner and others due to which the petitioner sustained fracture injuries. Immediately the petitioner was taken to Government Hospital, Nizamabad where she was treated as in-patient and thereafter she took

treatment from private doctors and incurred expenditure of Rs.75,000/- towards medical expenses and extra nourishment. According to the petitioner, at the time of accident she was aged 35 years and was doing agricultural work and firewood business and was earning a sum of Rs.6,000/- to Rs.8,000/- per month. Due to the accident, the petitioner sustained permanent disability and she is unable to do any work as before. Therefore, the petitioner prayed the Court to grant compensation of Rs.1,00,000/-

4. The first respondent remained *ex parte* before the Tribunal.

5. The brief averments made by the second respondent/insurance company in the counter are as follows,

The second respondent denied the rash and negligent driving of the lorry by its driver and also the injuries allegedly suffered by the petitioner and put the petitioner to strict proof of the same. The second respondent also specifically pleaded that the driver of offending lorry is a necessary party to the claim petition and as such due to his non-joinder, the claim petition is liable to be dismissed in limini. The second respondent also contended that the compensation claimed by the petitioner is highly excessive and exorbitant and prayed the Court to dismiss the petition.

6. Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim, the petitioner examined herself as P.W.1 and got marked Exs.A1 to A5. On behalf of the second respondent, no

oral evidence was produced, however, Ex.B1-insurance policy was marked with consent.

7. The Tribunal, after considering the oral and documentary evidence, held that the accident occurred due to the rash and negligent driving of the lorry by its driver and awarded compensation of Rs.4,000/- together with interest @ 9% P.A.

8. Not satisfied with the meagre compensation awarded by the Tribunal, the petitioner preferred the present appeal.

9. The learned counsel for the appellant/petitioner argued that the Tribunal did not appreciate the evidence on record and also the fractures and other injuries suffered by the appellant/petitioner and huge expenses incurred by her towards treatment, transport, extra-nourishment, attendant charges, lodging etc. and therefore prayed the Court to enhance the compensation.

10. On the other hand, the learned standing counsel appearing for the insurance company-second respondent argued that the appellant suffered only two simple injuries and for those two injuries, the Tribunal has rightly awarded a reasonable compensation and therefore the finding of the Tribunal needs no interference. The Tribunal awarded just and reasonable compensation and he prayed the Court to dismiss the appeal.

11. Having regard to the submissions made by the learned counsel for the parties, the points that arise for consideration are:

1. Whether the compensation awarded by the Tribunal is just and reasonable?
2. Whether the appellant is entitled for enhancement of compensation?

12. **Points:**

A perusal of the evidence of PW1 and Exs.A1-FIR and Ex.A2-charge sheet shows that the accident occurred due to the rash and negligent driving of the lorry by its driver and there is no dispute with regard to the same. The finding of the Tribunal on this aspect needs no interference. There is also no dispute that the lorry was insured with the second respondent under Ex.A5-insurance policy.

13. Coming to the compensation, the petitioner as P.W.1 stated in her evidence that she sustained injuries on her head, back, knees and other parts of her body, she was shifted to Government hospital, Nizamabad where she was treated as in-patient for 4 days and thereafter she took treatment from private doctors and she spent Rs.60,000/- for her treatment. She stated that because of the injuries sustained in the accident, she is unable to attend any agricultural work and as such she lost her income of Rs.5,000/- per month and therefore prayed the Court to enhance the compensation to Rs.1,00,000/-.

14. Admittedly as per the evidence of P.W.1, immediately after the accident she was shifted to Government Hospital, Nizamabad where she took treatment for about 3 to 4 days and as per Ex.A3-medical certificate, she sustained only two simple injuries and there is no

evidence produced by the petitioner/appellant that she spent Rs.75,000/- towards medical expenses and sustained loss of her monthly income. Considering the fact that the appellant sustained only simple injuries, the Tribunal has rightly awarded Rs.2,000/- for each of two simple injuries, totalling to Rs.4,000/-.

15. The learned counsel for the appellant argued that the appellant was treated in the Government Hospital, Nizamabad for about 3 to 4 days as inpatient and due to the injuries, the appellant suffered pain and incurred medical expenditure, though the treatment in the Government Hospital is free. Admittedly the appellant took treatment in the Government Hospital on free of costs, but the fact remains that after discharge from the Government Hospital, she must have incurred expenditure towards medical expenses, extra-nourishment and other charges. Considering all these aspects, this Court finds that ends of justice would be met if the appellant is awarded Rs.1,000/- towards medical expenses and extra-nourishment and Rs.500/- towards loss of income, in addition to Rs.4,000/- already awarded by the Tribunal. Thus the appellant is entitled to a total compensation of Rs.5,500/- (Rupees Five Thousands and Five Hundreds only) with interest @ 7.5 P.A. from the date of claim petition till realisation.

16. This appeal is partly allowed. There shall be no order as costs. Miscellaneous applications, if any, shall stand closed.

ANIS, J

Dt. 4.1.2017
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