

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A No. 805 of 2010

JUDGMENT:

This appeal is filed by the claimant against the order and decree dated 05.03.2010 passed in M.V.O.P.No.160 of 2006 by the Motor Accidents Claims Tribunal-cum-VIII Additional District Judge (FTC), Chittoor, (for short, 'the Tribunal), granting compensation of Rs.25,000/- as against the claim of Rs.4,00,000/- on account of the injuries sustained in the motor vehicle accident.

2. Brief averments in the petition and counter are that on 12.09.2002, the appellant boarded APSRTC bus bearing No.AP-09-Z-7964 to go to Ponnai and when the bus reached near MMN Gardens by the side of Chittoor-Puttur road at about 6:15 P.M., a tipper lorry bearing No.AP-03-T-3744 driven by its driver in a rash and negligent manner came from opposite direction and dashed the bus resulting in injuries to the appellant and also other passengers. The appellant was admitted as inpatient in Government Headquarters Hospital for 5 days and later in Bindu Nursing Home, Chittoor, for 10 days, for treatment of bleeding injuries all over her body. She averred in her Claim Petition that she suffered permanent disability due to fracture of right forearm and that she is unable to do any work with her right hand, and as her husband is blind, she is the only earning member of her family and her sons who are studying are dependent on her. Alleging that the accident occurred due to the rash and negligent driving by the driver of the tipper, she claimed compensation against respondent Nos.1 and 2, who are the owner and insurer, respectively, of the tipper and the respondents No.3 and 4 are the driver and insurer of the bus.

4. The Tribunal on consideration of the evidence of the injured-PW1 and the eye witness PW2 and on consideration of the documents Exs.A1 to A14 has awarded a compensation of Rs.25,000/- as against her claim of Rs.4,00,000/-. The appellant being aggrieved by the quantum of compensation preferred this appeal seeking for enhancement of compensation.

5. Heard the learned counsel for the appellant Sri S.V. Muni Reddy. No arguments were advanced on behalf of the respondents though Sri A. Rama Rao appeared on behalf of the respondents.

6. Learned counsel for the appellant mainly submitted that the Tribunal awarded Rs.25,000/- as against a claim of Rs.4,00,000/-. The appellant suffered one grievous injury and one simple injury and she filed Ex.A14-disability certificate showing 40% disability, but the Tribunal has awarded only Rs.25,000/- which is required to be enhanced. It is further submitted that the Tribunal has not awarded compensation for pain and suffering, hospitalization, attendant charges and nutrition and therefore sought for enhancement of compensation.

7. At the outset, the dispute in this appeal is only with regard to the quantum of compensation awarded by the Tribunal. It is appropriate to refer to the injuries suffered by the appellant for considering the quantum of compensation. The appellant contended that she suffered the following injuries:

- (i) Lacerated bleeding injury on the frontal region on the face
- (ii) Bleeding injury and fracture on her right forearm
- (iii) Bleeding injuries to her right knee
- (iv) Bleeding injuries all over the body

As per Ex.A6-Wound Certificate issued by PW2, the appellant suffered the following injuries:

- (i) Lacerated injury measuring 4 cm x 1 cm bone deep on frontal region. X-ray of the skull has not revealed any bone injury.
- (ii) Fracture of lower 1/3 of the shaft of right Ulna.
- (iii) Pain and tenderness of right knee.

8. In paragraph No. 13 of the impugned Award, the Tribunal observed that PW2 has issued medical certificate-Ex.A14 showing that the appellant sustained disability of 40% due to malunited fracture of distal 3rd right Ulna and she is unable to grip objects. On the ground that PW2 did not treat PW1 prior to issue of the disability certificate, the Tribunal has not taken into consideration the disability assessed by the medical officer at 40%. The Tribunal has concluded that as the medical certificate was not issued by the Doctor who has treated the appellant, the medical certificate Ex.A14 cannot be taken into account, as such the injuries suffered by the appellant are not grievous injuries.

9. In fact there is ample evidence on record to show that the appellant had taken treatment at Government Hospital, Chittoor, Bindu Nursing Home, Nellore Hospital, Dr. Muni Raja of Chittoor, and at Vamsi Clinic, Palamaner. The Tribunal totally ignored the certificate Ex.A14 issued by PW2. However, the Tribunal may reject the assessment of disability at 40% but atleast the Tribunal would have considered the treatment taken by the appellant for the injuries suffered by her.

10. No doubt the medical officer who issued the medical certificate-Ex.A14 is not from a Medical Board constituted by the Government Hospital. Therefore, even if the percentage of disability is not taken at 40%, atleast the Tribunal should have awarded some reasonable

compensation for pain and suffering, hospitalization, attendant charges and nutrition.

11. On consideration of the evidence, this Court is of the view that the award passed by the Tribunal is on the lower side and inadequate. Therefore, the compensation awarded by the Tribunal is enhanced and awarded as shown in the following tabular format.

SNo	Head	Compensation Awarded by the Tribunal	Compensation enhanced
1.	Simple Injury and Grievous Injury	Rs.25,000	Rs.40,000/-
2.	Pain & Suffering	Nil	Rs.10,000/-
3.	Hospitalisation & medical expenditure	Nil	Rs.10,000/-
4.	Attendant Charges & transport	Nil	Rs.5,000/-
5.	Nutrition	Nil	Rs.5,000/-
	Total	Rs.25,000/-	Rs.70,000/-

12. In the result, the appeal is partly allowed, modifying the compensation awarded by the Tribunal by enhancing from Rs.25,000/- to Rs.70,000/-, with interest at 7.5% from the date of petition till the date of realization. No costs. Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE G. SHYAM PRASAD

Dated: 17.02.2017

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THE HON'BLE SRI JUSTICE G. SHYAM PRASAD



M.A.C.M.A No. 805 of 2010

February, 2017

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