

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A No. 188 of 2010

JUDGMENT:

This appeal is arising out of the order dated 16.09.2009 in M.V.O.P.No.477 of 2007 on the file of the Chairman, Motor Accidents Claims Tribunal-cum District Judge, Ongole, (for short, 'the Tribunal').

2. The appellant is the claimant who filed MVOP No.477 of 2007 before the Tribunal seeking a compensation of Rs.1,50,000/- on account of the injuries suffered by her in the motor vehicle accident, that took place on 14.12.2006. Brief facts of the case are that on 14.12.2006, at about 8:30 AM, while the appellant, along with other villagers, was proceeding towards Podili in an Auto bearing No.AP-27W-3891, and when the auto reached near Kunchepalli on Podili Darsi road, an APSRTC bus bearing No. AP-11Z-4826 of Podili Depot, which was proceeding towards Hyderabad, dashed the auto and dragged the auto to some distance on the road resulting in the instantaneous death of five persons in the auto, and the appellant received injuries. The appellant was immediately taken to Government Hospital, Ongole and from there she was shifted to Government General Hospital, Guntur, where she underwent treatment from 15.12.2006 to 18.01.2007. A case was registered in Crime No.173 of 2006 of Podili Police Station for the offences punishable under Sections 337, 338 and 304A IPC. Alleging that the

accident occurred only due to the rash and negligent driving by the driver of the APSRTC bus, the appellant filed the claim petition against respondents 1 and 2, who are the Vice Chairman & Managing Director, APSRTC, Musheerabad, Hyderabad; and the APSRTC (represented by the Vice Chairman & Managing Director, APSRTC, Musheerabad, Hyderabad), respectively.

Respondent No.1-VC & MD, APSRTC remained *ex parte*. Respondent No.2-Divisional Manager, Ongole, filed a written statement denying all the material averments in the claim petition and contending that the accident was not due to the rash and negligent driving by the driver of the APSRTC bus, but for the rash and negligent driving of the auto driver, by boarding 18 passengers in his auto and driving in a zig-zag manner, the auto dashed against the stationed APSRTC bus.

Based on the pleadings, the Tribunal framed the following three issues:

- (i) ***Whether the petitioner sustained injuries in motor accident; if so, due to rash and negligent driving of the driver the APSRTC Bus or is there any contributory negligence also on the part of auto driver?***
- (ii) ***Whether the petitioner is entitled to claim any compensation, if so, to what amount and from whom?***
- (iii) ***To what relief?***

On behalf of the appellant-claimant, PWs.1 to 3 were examined and Exs.A1 to A6 were marked. On behalf of the respondents, RW1 was examined and no document was marked.

The Tribunal, on consideration of the evidence available on record, partly allowed the petition, wherein awarding a compensation of Rs.26,250/- against the respondents with proportionate costs and interest at 9% per annum. Aggrieved by the award of inadequate compensation, this appeal has been filed for enhancement of compensation.

3. Heard Sri Nutalapati Krishna Murthy, learned counsel for the appellant; and Sri P.Durga Prasad, learned counsel representing the learned Standing Counsel for the respondent-APSRTC.

4. Learned counsel for the appellant submitted that the Tribunal has awarded Rs.25,000/- for one grievous injury. The Tribunal has not awarded any compensation under the Heads of pain & suffering, transport charges, extra nourishment and attendant charges. Therefore, sought for awarding of compensation for the above Heads, and enhance compensation.

5. Learned counsel for the respondent-APSRTC contended that the Tribunal has awarded Rs.25,000/- towards fracture injury and Rs.10,000/- towards simple injuries, basing on the evidence and apportioned the liability at 75% which comes to Rs.26,250/- and it is adequate compensation.

6. The Tribunal, with regard to quantum of compensation, in page 9 of the impugned award, observed as under:

“Now coming to the Quantum, the petitioner sustained 1) 4x1/4 cm lacerated injury on left forehead oblique lie, 2) 3 x 1/4 cm lacerated injury on right parietal region, 3) 6 x 2 cm Abrasion 1” below the right knee joint, 4) 18 x 5 cm depth upto bone. Skin injury at lower 1/2 medial side of left leg. The injuries are simple in nature as per Ex.A2 wound certificate issued by the Medical Officer, Community Health Centre, Podili. However, the petitioner was referred to Govt. Hospital, Ongole, there from to GGH, Guntur. Though, it is the evidence of PW2 Civil Asst. Surgeon, Podili that there is no grievous injury, the evidence of PW3 Asst. Professor of Surgery, GGH, Guntur shows the petitioner sustained frontal bone fracture which is a grievous injury. The petitioner was done skin grafting. Ex.A6 is the case sheet filed in respect of the treatment rendered at GGH, Guntur. The injuries were healed by the date of discharge as per the evidence of PW3. Thus, considering the evidence of PW3 coupled with Ex.A6 case sheet, a sum of Rs.25,000/- towards the fracture injury, a sum of Rs.10000/- for the remaining simple injuries and medical expenses in total a sum of Rs.35,000/- out of which 75% liability of respondents come to Rs.26,250/- which sum the petitioner is entitled against the respondents with interest and proportionate costs. Accordingly the issues 1 & 2 are answered.”

7. As per the evidence of PW3-Assistant Professor of Surgery at Government General Hospital, Guntur, the appellant suffered the following injuries.

- i) **A laceration of 4 x 5 cms on fore-head.**
- ii) **A laceration of 3 x 4 cms below the left eye.**
- iii) **A deep laceration of 6 x 7 cms on the right knee joint.**
- iv) **Abrasion over both elbows.**
- v) **A deep laceration of size 18 cms x 5 cms over the medial aspect of left leg extending to the left foot exposing the bone.**

8. Of the above injuries, injury No.(v) is a grievous injury. The Tribunal has awarded compensation only for four injuries, including the grievous injury. The evidence of PW3 cannot be ignored as he is an Assistant Professor of Surgery and he has treated the appellant. He deposed that the appellant was admitted on 14.12.2006, and was admitted in Surgery Ward on 15.12.2006 and she was discharged on 18.01.2007, i.e., for more than a month she has undergone treatment as inpatient. Skin grafting was also performed on her for the 5th injury, and as per his evidence, fracture injury is a grievous injury. Ex.A5 is the X-rays and Ex.A6 is the Case Sheet at Government General Hospital, Guntur. As per Ex.A6, CT Scan was taken and it revealed a fracture of right frontal bone. The testimony of PW2- Assistant Professor of Surgery, Government General Hospital, Guntur, and PW3- Medical Officer, was not properly considered by the Tribunal while awarding compensation.

9. The appellant was a 50 year old lady and a Coolie by profession. In view of the injuries suffered by her, she might have suffered pain during the period of treatment and she might have

suffered some loss of earnings also. On consideration of the evidence of PWs.2 and 3, who are medical officers, and the observations of the Tribunal in the above extracted paragraph, it is obvious that the appellant has suffered one grievous injury and four simple injuries. Therefore, the following compensation is awarded as shown in the tabular format.

SNo	Head	Compensation Awarded by the Tribunal	Compensation enhanced
1.	One Fracture (Grievous injury)	Rs.25,000	Rs.50,000/-
2.	Four simple injuries	Rs.10,000/-	Rs.20,000/-
3.	Attendant charges and transport	Nil	Rs.15,000/-
4.	Loss of earnings @ Rs.3,000 per month for two months	Nil	Rs.6,000/-
5.	Extra nourishment and Pain & suffering	Nil	Rs.5,000/-
	Total	Rs.35,000/-	Rs.96,000/-

10. In the result, the appeal is partly allowed by enhancing the compensation awarded by the Tribunal from Rs.35,000/- to Rs.96,000/- with interest at 9% per annum, and proportionate costs, from the date of petition till realization. Out of Rs.96,000/-, the appellant is entitled to 75%, which comes to Rs.72,000/-. No costs. Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE G.SHYAM PRASAD

07th February, 2017
KSM

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