

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MA.CMA.NO.897 OF 2006

JUDGMENT

The appellant is the claimant / injured. Not being satisfied with the compensation granted by the Motor Accidents Claims Tribunal (III A.D.J.) (F.T.C.), Nizamabad in O.P.No.622 of 2001 dated 22.11.2005, the claimant filed the present appeal seeking enhancement.

In the claim petition it is stated that on 23.07.2000 at about 7.30 a.m., when the claimant and her family members were going towards Nizamabad from Chinnaapur in an auto bearing No. AP-25-T-8340, in order to take treatment for her husband, and that when the said auto reached outskirts of Manikbandar, an RTC bus bearing No. AP 10 Z 5586 came in a rash and negligent manner from Nizamabad side and gave dash to the auto, after overtaking another bus, proceeding ahead of it. As a result, accident occurred, causing injuries to the claimant and others, traveling in the auto. In the said accident, claimant sustained fracture to both bones of right leg, hands and other injuries on the head and all over the body. On receipt of complaint, Police at Makloor, registered a case in Crime No.63/2000 against the driver of the RTC bus.

It is further stated that the claimant is the resident of Chinnapoor village of Makloor mandal and a beedi roller by occupation. Prior to the accident, she was hale and healthy, earning an amount of Rs.5,000/- and that on account of the accident, she is unable to roll beedies and thus her total income is affected and suffered permanent disability. Though she is entitled

to compensation of Rs.13,32,000/-, she is restricting the claim to Rs.1,50,000/-. With these averments, the claimant filed claim petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.1,50,000/- with interest at the rate of 24 per cent per annum from the date of petition till the date of realization.

The respondents – Corporation filed counter affidavit and stating *inter alia* that the accident occurred due to rash and negligent driving of the driver of the auto in which the claimant was traveling and that without impleading and claiming compensation on the insured and insurer of the said auto, claim petition against the Corporation is not maintainable and further disputing the injuries, age, avocation and income of the claimant, and stating that the compensation claimed is excessive; sought for dismissal of the claim petition.

Based on the above averments the Tribunal framed appropriate issues and in support of her claim, the claimant got examined herself as P.W.1 and also examined the doctor who treated her as P.W.2. She also got marked Exs.A-1 to A-4. On behalf of the respondent – Corporation, no evidence, either oral or documentary, was adduced.

Considering the evidence of the claimant as P.W.1 and Exs.A-1 and A-2, which are copies of FIR and charge sheet, and as no rebuttal evidence was adduced on behalf of the Corporation, the Tribunal has recorded finding of fact that the accident occurred due to rash and negligent driving of the driver of the bus of the Corporation bearing No.AP-10-Z-5586.

Tribunal, based on the evidence of doctor P.W.2, who treated the claimant and the documentary evidence under Exs.A-3 and A-4, which are copies of medical certificate and original discharge ticket, found that the petitioner suffered fracture of right tibia and a simple injury on the right upper arm and that she has taken treatment in Government Hospital as inpatient from 23.07.2000 to 4.8.2000. Considering the material on record, the Tribunal awarded following amounts:

(i) Fracture of right tibia	-- Rs. 10,000 – 00
(ii) For one simple injury	-- Rs. 3,000 – 00
(iii) Cost of treatment	-- Rs. 2,000 – 00
(iv) Extra-nourishment	-- Rs. 2,000 – 00
(v) Transport charges	-- Rs. 2,000 – 00
(vi) Pain and suffering	-- Rs. 5,000 – 00
(vii) Loss of earnings	-- Rs. 3,000 – 00

	Rs. 27,000 – 00

The Tribunal, in all, awarded an amount of Rs.27,000/- with interest at the rate of 7.5 per cent per annum from the date of the petition, till the date of deposit, with proportionate costs. As already noted above, not being satisfied with the quantum of compensation, the claimant preferred the present appeal.

Learned counsel appearing for the appellant / claimant, reiterating the averments made in the claimant petition and taking this court to the evidence on record, submitted that the Tribunal awarded meagre amounts and sought for enhancement.

Though notice is served on the respondent, none appeared on their behalf.

The present appeal is by the claimant, questioning the quantum of compensation. The case of the claimant is that because of the accident, she sustained fracture to both bones of right leg, hands and other injuries on the head and all over the body. She examined herself as P.W.1 and deposed about the injuries sustained by her.

P.W.2 is the medical officer in Government Head Quarters Hospital, Nizamabad and she treated the claimant. As per her evidence, she examined the claimant on 23.07.2000 in Government Head Quarters Hospital Nizamabad and found an abrasion ¼” x ¼” on the right knee and a linear abrasion on the right upper arm 3 x 3”. X-ray in MLC No.552 dated 24.07.2000, revealed fracture of right tibia. As per the case sheet marked as Ex.X-1, the claimant sustained fracture of right tibia apart from a simple injury on the right upper arm.

In view of evidence of P.W.2, as the claimant sustained fracture of right tibia, which is grievous, amount of Rs.10,000/- awarded by the Tribunal for the said injury is meagre and requires enhancement. Accordingly, the claimant is awarded an amount of Rs.25,000/- for the said injury. For simple injury, the amount awarded by the Tribunal at Rs.3,000/-, is enhanced to Rs.5,000/-. Similarly, amount awarded by the Tribunal under the head of extra-nourishment at Rs.2,000/-, is enhanced to Rs.10,000/-. Having regard to the facts and circumstances, the amount awarded by the Tribunal under the head of ‘pain and suffering’, at Rs.5,000/-, is enhanced to Rs.15,000/-.

As per the claim statement, the claimant was hale and healthy and was attending the beedi rolling work and earning an amount of Rs.5,000/- per month and because of the accident, her earning capacity was affected. As per evidence of P.W.2, which is noted above, there is fracture to right tibia. The claimant was inpatient from 23.07.2000 to 4.8.2000 in Government Head Quarters Hospital, Niamabad. In these circumstances, the amount granted by the Tribunal at Rs.3,000/- for loss of earnings, is enhanced to Rs.10,000/-.

Thus in all, the compensation granted by the Tribunal, under all the heads referred to above, is enhanced from Rs.27,000/- to Rs.69,000/- (Rupees sixty nine thousand only). The enhanced amount shall carry interest at the rate of 7.5 per cent per annum from the date of the claim petition till date of payment.

The appeal is accordingly allowed in part to the extent indicated above.

Miscellaneous petitions pending, if any, shall stand closed. No costs.

A.RAJASHEKER REDDY,J

DATE:15—03—2018

AVS