

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MA.CMA.NO.677 OF 2006

JUDGMENT

The appellant is the claimant / injured. Not being satisfied with the compensation awarded by , Motor Accidents Claims Tribunal (II Additional District Judge), at Nizamabad in O.P.No.167 of 2002 dated 31.05.2005, the present appeal is filed by the claimant, seeking enhancement.

As per the claim petition, the case of the claimant is that on 31.10.2001 when she, along with ten other passengers boarded the jeep bearing No.AP -1-C- 4284 at Modhole, for proceeding to Nizamabad, and that when the jeep reached the outskirts of Mittapoor village at about 10.30 a.m., the driver of the said jeep drove the vehicle in a rash and negligent manner on the B.T. road connecting Modhole and Nizamabad, and thus lost control over the jeep and dashed against the tree, and thus accident occurred. In the said accident, claimant received injuries on her right leg, right shoulder, both hands, legs, back and head, and that both the bones of her right leg as well as her right shoulder were fractured and she was immediately admitted in the Government Hospital, Nizamabad for treatment. After discharge from that hospital, she was admitted in a private hospital for further treatment and spent an amount of Rs.50,000/- and in addition to that, she spent a sum of Rs.10,000/- for extra nourishment. In spite of treatment, the injuries sustained in the accident, were not completely cured and healed, and she suffered permanent disability. It is stated that the claimant is aged 35 years as on the date of the accident and that prior to the accident, she was working and earning an amount of Rs.5,000/- per month. Because of the

accident, she is unable to walk and work and depending on others for her sustenance. With these averments, the claimant filed claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.2,00,000/-.

The owner of the jeep remained ex parte. The insurance company filed counter affidavit and denied the averments in the claim petition with regard to manner of accident, injuries sustained by the claimant, age and avocation of the claimant. The insurance company further stated that the driver of the crime vehicle does not possess valid driving licence and that the crime vehicle, which was insured as private vehicle, was used as stage carriage. Therefore, as there are violation of policy conditions, the insurance company is not liable to pay compensation. Further contending that the claim is excessive, the insurance company sought for dismissal of the claim petition.

Based on the above averments, the Tribunal framed the following issues for trial:

1. Whether the accident has taken place due to rash and negligent in driving of the vehicle bearing No.AP 1-C-4284 by its driver?
2. Whether the petitioner is entitled for compensation. If so, to what just amount and against whom?
3. To what relief?

In support of the case of the claimant, P.Ws.1 and 2 were examined and Exs.A-1 to A-4 and Ex.C-1 were marked. On behalf of the insurance company, R.W.1 was examined and Ex.B-1 copy of insurance policy was marked.

Appreciating the evidence of the claimant as P.W.1 and considering Exs.A-1 and A-2, which are the certified copies of F.I.R. and charge sheet,

the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the jeep bearing No. AP -1-C-4284.

Though the insurance company denied its liability on the ground of violation of policy conditions by the insured/owner of the jeep viz., driver not possessing valid driving licence and the crime vehicle though insured as private jeep, was used as taxi, carrying passengers; it failed to lead any tangible evidence in support of these grounds. Therefore, the Tribunal held that the insurance company is liable to pay compensation.

Tribunal found that the claimant suffered two simple injuries and accordingly awarded an amount of Rs.2,000/- for each injury i.e, in all awarded an amount of Rs.4,000/- with interest at the rate of 9% per annum from the date of the petition till the date of realization and made both the insured and the insurer jointly and severally liable.

Not being satisfied with the compensation awarded by the Tribunal, the claimant preferred the present appeal.

The learned counsel for the claimant submitted that because of the accident, claimant sustained injuries on her right leg, right shoulder, both hands, legs, back and head and that both the bones of her right leg as well as her right shoulder were fractured and that she has taken treatment at Government Hospital, Nizamabad and after discharge from the said hospital, has taken treatment in private hospitals, and sustained permanent disability. Because of the accident, the claimant was unable to walk and work and is depending on others for sustenance. The claimant is aged 35 years and that prior to the accident, she was earning an amount of Rs.5,000/- and because

of the accident, she is unable to work. He submitted that the claimant who was examined as P.W.1 deposed about the injuries sustained by her. She also examined the doctor as P.W.2, who supported the evidence of P.W.1 and the doctor issued Ex.C-1 disability certificate. But the Tribunal without considering the evidence available on record, in proper perspective, awarded meagre compensation of Rs.4,000/- as against the claim of Rs.2,00,000/-. Therefore, sought to enhance the compensation.

The learned counsel for the insurance company supporting the impugned order and decree of the Tribunal, sought to dismiss the appeal.

As already noted above, in the present appeal, there is no dispute with regard to cause of the accident and the liability of the insurance company. The present appeal is filed by the claimant seeking enhancement of compensation.

To prove her claim, claimant was examined as P.W.1 and deposed as per the averments made in the claim petition. She examined doctor, who treated her in Government Hospital at Nizamabad, as P.W.2. He deposed that he examined P.W.1 on 13.04.2003 in the Government Hospital, Nizamabad and found two injuries on her person and that her right shoulder and both the bones of her right leg were fractured, that therefore, he issued the wound certificate Ex.A-3. The said certificate reveals that claimant sustained injuries to right shoulder and both the bones of right leg were fractured and they were serious in nature. P.W.2 also issued Ex.C-1 disability certificate, stating that the claimant sustained permanent partial disability at 50%.

The Tribunal disbelieved the evidence of P.W.2 on the ground that to support his version that P.W.1 sustained fractures as per Ex.A-3, he did not produce X-ray films of the claimant, and with regard to disability certified issued by him under Ex.C-1, he is not competent, as it is for the Medical Board to issue such certificate.

Here it is to be noticed that the accident occurred due to rash and negligent driving of the driver of the jeep. In the said accident, claimant sustained injuries. She, as P.W.1, testified these facts. P.W.2 is the doctor who treated her. He deposed that the claimant received injuries, which as per Ex.A-3 certificate are serious in nature. Though the X-ray films and other record were not produced, the fact that remains on record is that she sustained two injuries, since the insurance company did not lead any evidence to disprove this fact. This is a petition under Section 166 of the Act, where the court or the Tribunal, has to award just compensation, based on material on record.

Therefore, having regard to the facts and circumstances and the evidence on record, this court is of the opinion that the amount of Rs.2,000/- awarded by the Tribunal, for each injury, is meagre, and the same requires to be enhanced. Accordingly, compensation granted by the Tribunal at Rs.2,000/- per each injury, is enhanced to Rs.5,000/-. This is a case of accident, and as per the case of the claimant, she was admitted in Government Hospital, Niamabad, immediately after accident and after discharge, she was admitted in private hospitals and taken treatment. But the Tribunal has not awarded any amounts under other heads viz., pain and

suffering, extra nourishment and transport charges. Having regard to the facts and circumstances, I am inclined to award compensation under the said heads.

For the foregoing reasons, the claimant is awarded an amount of Rs.10,000/- for two injuries; Rs.10,000/- towards pain and suffering; Rs.10,000/- towards extra nourishment and; Rs.3,000/- towards transportation charges. In all the claimant is awarded an amount of Rs.33,000/- (Rupees thirty three thousand only).

The Tribunal in the present case awarded interest on the compensation amount at the rate of 9 per cent per annum. The Apex Court in *TAMIL NADU STATE TRANSPORT CORPORATION v. S.RAJAPRIYA*¹, taking note of the prevailing rate of interest awarded interest on the compensation at 7.5 per cent per annum. Therefore, the claimant is awarded interest on the enhanced compensation amount, at the rate of 7.5 per cent per annum from the date of petition, till the date of realization.

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:09—03—2018
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¹ AIR 2005 SC 2985