

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

M.A.C.M.A. No. 436 of 2006

ORDER :

This appeal is filed by the claimant against the Award of the Chairman, Motor Vehicle Accident Claims Tribunal-cum-IV Addl. District Judge, Tirupati, dated 12.05.2005 in O.P.No.269 of 2001 seeking enhancement of compensation.

2. For the sake of convenience, the parties hereinafter will be referred to as arrayed before the Tribunal. Brief facts which are necessary for disposal of the appeal are as follows:

On 11.05.2001, the petitioner and her husband Nagaraja boarded the jeep of the 1st respondent bearing No.AP 03 V 2957 at tirumala to go to Tirupati. When the jeep reached Vinayaka temple on Tirumala-Tirupati road, the driver of the 1st respondent drove it in a rash and negligent manner at high speed, lost control over the jeep and dashed against the road side iron grill, as a result, the petitioner sustained bleeding injuries and fracture of her left leg and thigh. She was shifted to SVRRGG Hospital, Tirupati and subsequently to CMC, Vellore Hospital for treatment. On a complaint, a criminal case was registered by the Traffic Police in Cr.No.13/2001 under Section 338 IPC and after filing of charge sheet against the driver of the jeep, the same was numbered as CC No.258 of 2001 and same as ended in conviction. The petitioner was making plastic bags and earning Rs.150/- per day. Operation was also conducted and steel plates and rods were inserted on the left leg of the petitioner. Petitioner suffered permanent disability due to

injuries and she was unable to work as before. As the petitioner spent amount towards treatment, she claims Rs.3,64,000/- towards compensation.

3. First respondent remained exparte. 2nd respondent filed counter denying the injuries sustained by the petitioner and amount spent by her and put her to strict proof of the same. This respondent put the petitioner to strict proof with regard to the rash and negligent driving of the jeep, her avocation, income, and the disability suffered by her in the accident. This respondent denied the validity of the permit particulars of the 1st respondent jeep and seeks protection under Sections 147, 148, 149 and 170 of the Motor Vehicles Act.

4. Basing on the above pleadings, the following issues were framed.

1. Whether the accident took place due to rash and negligent driving of the driver of the jeep bearing No.AP 03V 2957?
2. Whether the petitioner is entitled for compensation and if so, to what amount?
3. To what relief?

5. P.Ws.1 and 2 were examined and Exs.A1 to A11 marked on behalf of the petitioner. No witness is examined on behalf of the respondents, but Exs.B1 to B3 marked on their behalf.

6. The Tribunal, after considering both the oral and documentary evidence on either side, granted compensation of Rs.1,25,000/- against respondents 1 and 2 with interest at the rate of 9% per annum from the date of filing the petition, till the date of realization and that on such deposit, petitioner was entitled to withdraw Rs.75,000/- only and remaining amount

was directed to be deposited in any Nationalized Bank for a period of three years. Having dissatisfied with the quantum of compensation, the present appeal is filed.

7. Now, the point that arises for consideration is whether the appellant is entitled for enhancement of the compensation in addition to the amount granted by the Tribunal?

8. The petitioner in her deposition categorically deposed that the accident occurred due to rash and negligent driving of the driver of the offending vehicle. A perusal of the certified copy of First Information Report i.e., Ex.A1 and the certified copy of charge sheet i.e., Ex.A2 coupled with the evidence of P.W.1 shows that the accident occurred due to rash and negligent driving of the driver of the 1st respondent's jeep bearing No.AP 03V 2957. Moreover, the driver of the said offending vehicle was convicted in CC No.258 of 2001 in respect of the subject accident. The Tribunal has rightly decided the issue No.1 in favour of the petitioner and against the respondents.

9. A perusal of Ex.A2 shows that the petitioner sustained three grievous injuries and the Tribunal granted Rs.15,000/- for all the three grievous injuries as per the schedule. As such, no interference is called for on that count. As seen from the petition, petitioner claimed a sum of Rs.24,000/- towards transportation to hospitals. The petitioner took treatment at SVRRGG Hospital, Tirupati and CMC Hospital at Vellore, though the Tribunal granted Rs.20,000/-, amount claimed by the petitioner i.e., Rs.24,000/- appears to be reasonable and same is granted. As far as extra nourishment is concerned,

petitioner claimed an amount of Rs.75,000/- but the Tribunal granted only Rs.15,000/-. Considering the nature of injuries sustained by her and treatment taken for the same, an amount of Rs.25,000/- appears to be reasonable, as such, same is granted. Since the petitioner has produced medical bills under Exs.A5 and A8 for Rs.31,432/- and Rs.1731/- respectively, totaling Rs.33,163/-, same cannot be ignored. As such, same is rounded off to Rs.33,000/- as against Rs.29,800/- granted by the Tribunal. Since the petitioner sustained injuries in the accident, her clothes might have damaged. As such, an amount of Rs.1,000/- as claimed in the petition, is granted against Rs.200/- granted by the Tribunal. By considering the nature of injuries sustained by the petitioner, Tribunal has rightly granted Rs.30,000/- towards pain and suffering, as such, no enhancement is need to be given on that count. In the petition, it is stated that she is earning Rs.150/- per day by making plastic bags, but she has not filed any documentary evidence to that effect. As such, her income can be taken as Rs.3,000/- per month instead of Rs.4,500/- per month. Since the petitioner took treatment from 11.05.2001 to 16.05.2011 (for 11 days), it might have taken about two months to heal the injuries, her loss of earnings can be assessed at Rs.6,000/- (Rs.3,000/- x 2). In all the compensation is enhanced to Rs.24,000/- (Rs.4,000/- towards transportation+ Rs.10,000/- towards extra nourishment + Rs.800/- towards damages to clothing + Rs.3,200/- towards medical bills+Rs.6,000/- towards loss of income for two months).

In view of the same, I am of the considered opinion that she is entitled for some more amount i.e., Rs.24,000/- in addition to the compensation granted by the Tribunal.

Accordingly, the MACMA is allowed granting compensation of Rs.1,49,000/- as against Rs.1,25,000/-, awarded by the Tribunal. The petitioner is entitled to interest on enhanced amount of compensation at 7.5% per annum from the date of petition till realization, as per the decision of the Apex Court in **Rajesh and others v. Rajbir Singh and others**¹.

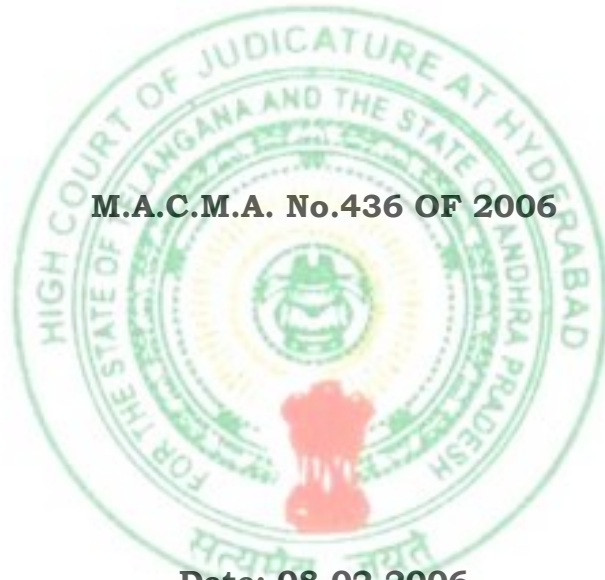
Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation, as indicated above, and confirming the same in all other respects. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this MACMA shall stand closed.

08.02.2018.
KVS

A.RAJASHEKER REDDY, J

¹ (2013) 9 Supreme Court Cases 54

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