

THE HON'BLE MS. JUSTICE J. UMA DEVI

MACMA NO. 2202 of 2009

JUDGMENT:

The claimant in OP No. 1958 of 2002 disputing the quantum of compensation awarded by the Motor Accident Claims Tribunal-cum-II-Addl. District Judge (Fast Track Court), Nizamabad vide its order dated 12.7.2007, has preferred this appeal.

The parties will hereinafter be referred to as 'the petitioner' and 'the respondents' as they are arrayed in the abovementioned OP for the sake of convenience.

The case of the petitioner is that on 16.9.2002 at about 9.00 A.M. while she was traveling in an auto bearing No. AP-25-U-2641 from Thimmapur towards Morhad, when the auto reached Morthad village bus stand, the auto hit a stationed bore well lorry on its back side due to the rash and negligent driving of the said auto by its driver. In the accident the petitioner sustained fractures to both the jaws, and lost front upper teeth and also two other teeth, apart from a fracture to nose and fracture injury to her right hand shoulder and fractures to second, third and fourth ribs. Immediately after the accident she was shifted to Government Hospital, Armoor for treatment, and from there she was taken to Mahalaxmi Hospital, Armoor where she was operated twice and rods were inserted. Dr. G. Prakash and others attended on her. She incurred a sum of Rs.2,00,000/- towards medical expenditure. She laid the claim for a sum of Rs.4,00,000/- as against

the respondents 1 and 2 who were the owner and insurer of the offending auto bearing No. AP-25-U-2641.

The petitioner, to establish her aforementioned contentions, examined herself as P.W.1, and Dr. Anil Padal as P.W.2 and relied on Exs.A1 to A11. The Tribunal, on appreciation of the evidence of the petitioner and P.W.2 and other documentary evidence available in the case record, awarded compensation of Rs.30,000/-. The petitioner, having felt that the compensation amount of Rs.30,000/- awarded to her in respect of the fracture injuries she received to both bones of maxilla, ribs, and the other injuries received all over her body, was very meagre and low, came before this Court by preferring the present appeal.

The claim petition filed by the petitioner was not contested by the owner of the auto bearing No. AP-25-U-2641. The National Insurance Company Limited did not enter appearance to contest even after service of notice on it in the present appeal.

The Tribunal, relying on the oral testimony of P.W.1 whose testimony was corroborated in all aspects with the documentary evidence she produced, had rightly observed that the accident dated 16.9.2002 occurred due to the negligent driving of the auto bearing No. AP-25-U-2641 in which she travelled and such accident resulted in injuries to her and fixed the tortuous liability as against the driver of the auto bearing No. AP-25-U-2641 who was responsible for the occurrence of the aforesaid accident and by applying the doctrine of *re sips loquitur* it held that the respondent No.1 is liable vicariously

for the negligent act committed by the driver of the auto. This Court finds substantial material in the case record to concur with the Tribunal on the aspect of fixing liability as against the respondents 1 and 2 who are owner and insurer of the offending auto.

Coming to the quantum of compensation, it is evident from the recitals mentioned in Ex.A3-wound certificate that the petitioner was examined by a Woman Assistant Surgeon at Government Hospital, Nizamabad where she took medical examination and the doctor who examined her noticed fracture to maxilla bone. The Tribunal, on thorough appreciation of oral testimony of PWs 1 and 2 and the supporting documentary evidence, Exs.A3 and A4, noticed that the petitioner received fracture of maxilla bone extending from upper left centre incisor to first mola and loss of upper left lateral incisors and all the aforementioned injuries were grievous in nature.

The petitioner had taken treatment from P.W.2, a consultant Dentist in Aparna Hospital, Armoor. Though reliable and clinching evidence was adduced by the petitioner to prove the nature of the injuries received by her, the Tribunal awarded a total compensation of Rs.30,000/-, which, in my considered view, appeared to be very meagre and low. Having noticed substantial force in the contention of the petitioner that she had taken treatment in Aparna Hospital, Armoor under the care and supervision of P.W.2 who was a consultant Dentist of the abovementioned hospital in respect of fracture injuries to both bones of maxilla and for other injuries which was fully supported by the evidence on record, this Court opines that

the compensation amount of Rs.30,000/- awarded by the Tribunal to the petitioner is not reasonable and adequate. The Tribunal ought to have awarded compensation of Rs.50,000/- taking into consideration of the evidence given by P.W.2 in respect of the fracture injuries received by the petitioner to both bones of maxilla.

On thorough appreciation of the oral and documentary evidence available in the case record, this Court is of the view that a sum of Rs.50,000/- can be awarded to the petitioner towards compensation in respect of the injuries received by her as against Rs.30,000/-.

In the result, the appeal filed by the petitioner challenging the award dated 12.7.2007 in OP No. 1958 of 2002, is partly allowed by enhancing the compensation to Rs.50,000/- (Rupees Fifty Thousands only) from Rs.30,000/-. The enhanced compensation is payable by the respondents 1 and 2 jointly and severally together with interest @ 7.5% per annum. Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

JUSTICE J. UMA DEVI

Dt.3.1.2018
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