

HONOURABLE SRI JUSTICE D.V.S.S. SOMAYAJULU.

M.A.C.M.A.NO. 286 OF 2012

JUDGMENT :

M.A.C.M.A.No. 286 of 2012 is filed by the petitioner-claimant, who is dissatisfied with the compensation that is awarded and is questioning the judgment and decree dated 15/09/2011 passed by the Chairman, Motor Accident Claims Tribunal/Principal District Judge, Ranga Reddy district at L.B. Nagar.

2. Heard Sri T. Venkat Reddy, learned counsel for the appellant and Sri N. Vasudeva Reddy, learned Standing Counsel for the respondent-APSRTC.

3. The learned counsel for the appellant points out that there is no strict dispute about the quantum awarded towards medical expense, which according to the learned counsel is based on the bills produced by the appellant-claimant herself. There is a dispute and/or dissatisfaction about the quantum awarded towards pain and suffering and loss of earnings.

4. The appeal arises because of the quantification of the damages towards pain and suffering, loss of earnings, which are quantified at Rs.50,000/- only. The learned counsel for the appellant points out that the injuries that are sustained are detailed in Para No.10 of the impugned judgment. The medical records are

testimony to the sustained injuries. Of which, six are fractures. In addition, claimant sustained other injuries. The learned counsel also points out that PW-3, who was the Ophthalmic Surgeon, who examined the doctor said that she has lost her vision in her left eye due to “Hemotoma” and “non-reactive pupil in left eye with impending central retinal artery occlusion”. The learned counsel also points out that in all there were fourteen injuries and two bouts of treatment, which includes hospitalization. She was initially treated from 18/01/2009 to 07/02/2009 and later from 20/10/2009 to 27/10/2009. The learned counsel also points out the evidence of the doctor, PW-2, who clearly certified that PW-1 cannot sit on the floor, cannot walk without pain, cannot use an Indian toilet, cannot travel alone in the public transport and needs an attendant for her day-to-day activities. The doctor further clearly deposed that PW-1, who is a labourer cannot attend to her avocation permanently. He certifies that all the injuries are grievous in nature. PW-2 also deposed that she had multiple problems during her hospitalization and also was put on mechanical ventilator support. The evidence of PW-2 is clear and categorical according to the learned counsel and he also points out that there is virtually no cross-examination on the material aspect of the evidence given by the doctor. The learned counsel also points that PW-3 was another doctor, who was the ophthalmic surgeon, who was examined by the claimant. According to the evidence of this doctor, intensive treatment was carried out to the

eye of the injured/claimant. Even on the date of the deposition, the doctor certifies that the claimant has lost permanent vision in her left eye. Therefore, the learned counsel submits that in view of this clear and categorical evidence, the compensation amount towards pain and suffering and loss of earnings is totally inadequate. The learned counsel in the alternative also submits that if the multiplier suggested by the judgment of the Hon'ble Supreme Court of India in the case of **SARLA VERMA** is adopted as a means, the claimant, who is earning Rs.4,500/- per month is entitled to Rs.54,000/- per annum and would be entitled to Rs.5,94,000=00 as compensation. Therefore, the learned counsel prays that the compensation should be adequately enhanced.

6. Sri N. Vasudeva Reddy, the learned standing counsel for the TSRTC on the other hand argues that there is no clear certification by the doctors of the percentage of the disability. According to the learned standing counsel that unless the percentage of disability is specified, it will be very difficult for the Court to assess the compensation or the figures to be granted. He states that none of the doctors have certified that there is 90% or 100% disability. It is his contention that in the circumstances of the case, the award of Rs.50,000/- towards pain and suffering and loss of earnings is adequate.

7. The learned standing counsel also submits in the alternative that it is a fit case to be remanded to the lower Court for the purpose of re-assessment of the damages.

8. This Court after hearing both the learned counsel also notices that the original petition was filed in the year 2009 for an accident that occurred on 18/01/2009. The orders in the lower Court was passed in September 2011 and this appeal has been filed in January 2012. Remitting the matter at this stage does not appear to be correct or appropriate. Even if there is no certification in terms of percentage or disability, the oral evidence of PW-2 is very clear and categorical. He deposes with great clarity about the injuries sustained and he also deposes about the treatment that she underwent including the surgeries in the two bouts of hospitalization. He clearly stated on oath that PW-1, who is a labourer cannot sit, cannot walk without pain, cannot use an Indian toilet, cannot travel alone in public transport and needs an attendant for her day-to-day activities. In conclusion, he also deposes that PW-1, who is a labourer, cannot continue with her avocation permanently. This Court also notices the fact that there is no effective cross-examination on the substantial points of oral evidence of this doctor. The next doctor, who was examined, is PW-3. He clearly deposed that the injured-claimant has lost her vision in the left eye. Therefore, a combined reading of evidence of these two well-trained doctors makes it very clear that PW-1 is a labourer cannot attend her day-to-day activities, that she is unfit to travel alone in public transport, cannot sit on the floor and cannot walk without pain. In addition, she has lost the vision in one eye. All of these clearly signify that she is totally unfit to carry out her

duties as a labourer. With these injuries and the consequent difficulty, no person will hire her as labourer. Therefore, the available evidence makes it very clear that she is totally disabled and unfit to carry out on her avocation. Even in the absence of specific certificate mentioning the percentage of disability, the other available evidence makes it clear that she is not in a position to attend to her normal avocation. Therefore, this Court is of the opinion that she is totally incapacitated from carrying out her duties.

9. The next question would be the quantification. This Court is of the opinion that the damages awarded towards pain and suffering and loss of earnings of Rs.50,000/- are inadequate. The detailed evidence of the doctors shows that there were *two bouts of hospitalization* and that *surgeries* were carried out. She was put on a “*ventilator*” and she has lost her vision totally in left eye. PW-2 and PW-3 and the medical evidence show the *trauma* that she has undergone. Therefore, this Court is of the opinion that a sum of Rs.50,000=00 should be awarded towards pain and suffering only.

10. This Court also finds some force in the submission made by the learned counsel for the appellant that even if the multiplier “11” is adopted as prescribed for her age (in the SARLA VERMA’S case), the total compensation would come to Rs.5,94,000=00. This is an alternative submission that is made adopting this yardstick. This Court is of the opinion that in addition to a sum of

Rs.3,50,000/- that was awarded for the medical expenses, the injured-claimant is entitled to Rs.50,000/- towards pain and suffering and an additional sum of Rs.1,50,000=00 towards her loss of earnings. As this Court feels that since she is aged 55 years, she would have another ten years of working life if she was not otherwise injured. Therefore, the compensation is fixed as follows : Rs.50,000/- towards pain and suffering and a sum of Rs.1,50,000/- towards loss of earnings in addition to the Rs.3,50,000=00 already awarded. In all Rs.5,50,000=00 is awarded. The other parts of the judgment are not really questioned. The awarded amount shall carry interest as mentioned earlier.

11. With the above modification, this appeal is allowed.
No costs.

12. As a sequel, miscellaneous petitions if any, pending in this MA.CMA.No.286 of 2012 stands dismissed.

JUSTICE D.V.S.S. SOMAYAJULU.

HONOURABLE SRI JUSTICE D.V.S.S. SOMAYAJULU.



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Court Master: I s L
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