

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

M.A.C.M.A. No. 42 of 2006

ORDER :

This appeal is filed by the claimant against the Award of the Chairman, Motor Vehicle Accident Claims Tribunal-cum-III Addl. District Judge, Karimnagar dated 17.01.2003 in O.P.No.601 of 2000 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:

Petitioner filed petition under Section 166 (1)(a) of the Motor Vehicles Act claiming compensation of Rs.50,000/- for the injuries sustained by her in the motor vehicle accident took place on 29.05.1999 at 3.15 p.m at Basanthnagar. That on 29.05.1999 at 3.15 p.m, she was traveling in APSRTC bus belonging to Godavarikhani depot and it was being driven by the 1st respondent. The bus was coming from Peddapalli side to Godavarikhani. While so, the said bus reached near Basanthnagar, the 1st respondent drove the same in rash and negligent manner with high speed and dashed the standing jeep bearing No.AIF 3481 to Gokul Milk Dairy farm, as a result, one person died on the spot and one person died in Karimnagar hospital, whereas the petitioner sustained grievous injuries and 7 other passengers of the bus sustained injuries. Thus, the accident took place due to rash and negligent driving of 1st respondent. The Police, Basanthnagar registered a case in Cr.No.29/99 under Section 304-A, 337, 338 IPC against 1st

respondent. The petitioner sustained fracture injury to her right femur and she was treated in community hospital, Peddapalli and Sudha Nursing Home, Karimnagar. The petitioner was aged about 60 years at the time of the accident and the 1st respondent is under employment of 2nd respondent. Hence, the both the respondents are jointly and severally liable to pay said compensation.

3. The 1st respondent remained exparte and the 2nd respondent filed counter denying the averments in the petition and stated that accident did not take place due negligence of 1st respondent. The petitioner has not sustained injuries and she has not taken any treatment. Hence, this respondent is not liable to pay compensation.

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 vehicle i.e, bus bearing No.AP 10Z 418 by its driver?

2. Whether the petitioner is entitled to compensation and if so, to what amount and from whom?

3. To what relief?

5. Petitioner herself was examined as P.W.1 and got marked Exs.A1 to A4. No oral or documentary evidence is adduced on behalf of the respondents.

6. The Tribunal, after considering the oral and documentary evidence adduced on either side, granted compensation of Rs.23,000/- against the respondents 1 and 2 along with

interest at the rate of 9% per annum from the date of petition till realization. Seeking enhancement of the compensation, present appeal is filed by the claimant.

7. In this case, it is to be seen that there is no dispute with regard to the occurrence of the accident and sustaining of injuries by the petitioner in a motor vehicle accident. Since the appellant is not satisfied with the quantum of compensation awarded by the Tribunal, she sought enhancement of the same in this appeal. The Tribunal while dealing with the issue No.2 has considered the evidence of P.W.1. It is elicited through oral and documentary evidence of P.W.1 that the appellant was operated twice i.e., first operation was performed on 02.06.1999 and steel rod was inserted and again she was operated on 11.06.2001 as the fracture was not united. She was in the hospital for 15 days for the first operation and for 14 days for the second operation. It is elicited from her evidence that a steel rod was inserted in her leg and that she is not able to walk freely due to the fracture of femur. Ex.A2, medical certificate also goes to show that she sustained fracture of right femur, which is certified to be grievous in nature. Though disability is claimed by her, no disability certificate is filed to prove the same. The Tribunal, after considering the age of the appellant and the nature of injury sustained by her, granted compensation of Rs.20,000/- towards injury and Rs.3,000/- towards medical expenses totaling Rs.23,000/- towards compensation, which in my view is on lower side. It is a fact that the petitioner was aged 60

years by the date of accident and she was also inserted a steel rod in her leg and she also spent 29 days in the hospital for both the surgeries. In view of the same, I am of the considered opinion that she is entitled for some more amount i.e., Rs.20,000/- towards pain and suffering and extra nourishment in addition to the compensation granted by the Tribunal.

Accordingly, the petitioner is granted compensation of Rs.43,000/- as against Rs.23,000/-, awarded by the Tribunal. The petitioner is entitled to interest 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.

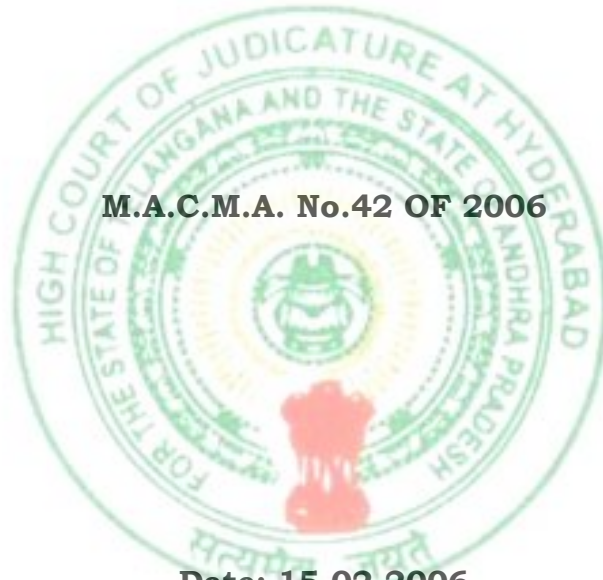
Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation, as indicated above, and confirming the same in all other respects. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this MACMA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

15.02.2018.
KVS

A.RAJASHEKER REDDY, J

¹ (2013) 9 Supreme Court Cases 54

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