

**THE HON'BLE SRI JUSTICE M.GANGA RAO**

**M.A.C.M.A. No. 1281 OF 2011**

**JUDGMENT:**

This appeal is filed by the appellant/injured/claimant through her husband being dissatisfied with the award and decree dated 06.04.2011 passed in O.P.No.695 of 2004 by the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Ranga Reddy District at L.B.Nagar, granting compensation of Rs.7,53,200/- against the claim of Rs.13,50,000/- with interest @ 7.5% per annum for the injuries sustained by her in the motor accident occurred on 08.09.2003.

2. The appellant filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 read with Rule 455 of the Andhra Pradesh Motor Vehicles Rules, 1989, alleging that on 08.09.2003 at 6.30 p.m. when the claimant was proceeding from Dilsukhnagar to her parents house at L.B.Nagar after completion of health check up in Seshi hospital, a steering auto bearing No.AP20U 4241 driven by its driver in a rash and negligent manner, came behind and dashed the claimant, as a result of which, the claimant fell down and sustained injuries on her head and other parts of the body. Immediately, she was shifted to Yashoda hospital, Malakpet, undergone operation and she has been under treatment as on date.

3. The 1<sup>st</sup> respondent – owner of the offending auto remained *ex parte* before the Tribunal.

4. The 2<sup>nd</sup> respondent/Insurance company filed counter denying the averments of the claim petition and disowned the liability to pay compensation.

5. Based on the pleadings, the Tribunal settled the following issues for its consideration:

- 1) Whether the accident took place on 8.9.2003 at about 6-39 P.M opposite to Sahadeva Reddy Sweet House, Dilsukhnagar on account of rash and negligent driving of the driver of the steering auto bearing No.AP 20U 4241?
- 2) Whether the petitioner is entitled to claim compensation and if so, for how much amount, from which respondent?
- 3) To what relief?

6. During the course of trial, the appellant/claimant represented by her husband got examined PWs 1 to 6 and got marked Exs.A.1 to A.27 and Ex.X.1. On behalf of the respondent/Insurance company, the Administrative Officer was examined as RW1 and got marked Ex.B.1 – insurance policy.

7. The Tribunal, having considered the evidence of PW1 and documents Ex.A.1 – FIR registered by the SHO, Malakpet and Ex.A.2 – Certified Copy of the Charge sheet, offending vehicle was registered as shown in Ex.A.26 and its driver has valid driving licence as per Ex.A.27, came to the conclusion

that the accident was occurred due to rash and negligent driving of the driver of the offending auto, answered the issue No.1 in favour of the claimant, in the absence of any contrary evidence and the same could not be found fault with by this Court.

8. With regard to issue No.2, assessment of compensation, the Tribunal having considered the evidence before it, observed that the injured-claimant is a married woman and housewife though she is a graduate and pursuing B.Ed. course. The Tribunal having treated her as a housewife, fixed the notional income as Rs.3,000/- per month and granted Rs.18,000/- (Rs.3,000/- x 6) towards loss of earnings for six months as she had undergone treatment as an inpatient and bedridden for about six months. The Tribunal granted Rs.1,75,000/- towards pain and suffering, Rs.25,000/- towards attendant charges, Rs.25,000/- towards extra-nourishment and Rs.2,10,200/- towards hospital and medical expenses. The Tribunal further granted Rs.3 lakhs towards permanent disability of 60% and thus awarded total compensation of Rs.7,53,000/- under different heads.

9. The appellant/claimant not being satisfied with the total compensation of Rs.7,53,000/- filed the present appeal seeking enhancement of the compensation.

10. The learned counsel for the appellant would contend that the appellant is in vegetative state. She is a married

woman and has female child, she needs a regular attendant for her care, as she is not in her senses. The Tribunal has erred in not granting attendant charges @ Rs.5,000/- per month as claimed. The husband of the appellant lost the services of the appellant/claimant permanently. Learned counsel relied on a decision reported in **Kavita vs. Deepak and others**<sup>1</sup>, wherein the Hon'ble Supreme Court taking the life expectancy of the claimant, granted charges @ Rs.2,000/- per month towards attendant charges for a period of 33 years. Learned counsel further states that the Tribunal is not justified in taking the notional income @ Rs.3,000/- per month. The Tribunal ought to have taken the income of the appellant as Rs.5,000/- per month, by placing reliance on the decision of the Hon'ble Supreme Court in **Arun Kumar Agarwal vs. National Insurance Company Limited**<sup>2</sup>.

11. The learned counsel for the 2<sup>nd</sup> respondent would contend that the Tribunal granted just and fair compensation to the appellant for the injuries she sustained and the Tribunal has rightly taken Rs.3,000/- per month towards notional income and disability at 60%. Moreover, the appellant is not entitled for any enhancement of amount over and above the compensation granted by the Tribunal.

12. As per the evidence of doctor PW2, the claimant is in vegetative state. However, the same is not supported by any

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<sup>1</sup> (2012) 8 SCC 604

<sup>2</sup> (2010) 9 SCC 218

documentary evidence. Ex.A.16-disability certificate would disclose that the appellant has suffered 60% disability. Hence, the finding of the Tribunal in this regard is hereby confirmed.

13. In **Arun Kumar (2 supra)**, the Hon'ble Supreme Court held that the gratuitous services rendered by wife/mother with true love and affection to husband and children and managing household affairs cannot be equated with services rendered by others. It is not possible to quantify any amount in lieu of services rendered by wife/mother to the family. However, for award of compensation some pecuniary estimate has to be made. The word 'services' to be given a broad meaning and to be construed taking into account the loss of personal care and attention given by deceased housewife. Therefore, this Court felt that it is just and proper to take the notional income of the claimant as Rs.5,000/- per month instead of Rs.3,000/-. Therefore, the claimant is entitled for Rs.6,12,000/- (Rs.5000/- x 12 x 17 (multiplier) x 60/100) towards permanent disability.

14. The Tribunal awarded Rs.18,000/- towards loss of earnings during the period as inpatient by taking the notional income as Rs.3,000/- per month. Considering the notional income as Rs.5000/- per month, the same was enhanced to Rs.30,000/- (Rs.5,000/- x 6).

15. The evidence of P.W.2-Doctor discloses that the appellant is in vegetative state. She was mentally disabled after the accident, she could not recognize & attend herself and for all her basic needs, she has to depend on others. There is no reason to disbelieve the evidence of P.W.2. In **Kavita (1 supra)**, the Hon'ble Supreme Court held that it is sufficient to say that in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily, efforts should be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and inability to lead a normal life and enjoy benefits, which would have been enjoyed but for the disability caused due to the accident. Based on above observations, the Hon'ble Supreme Court has granted attendant charges @ Rs.2,000/- and physiotherapy expenses @ Rs.3,000/- per month to the victim therein who was aged 30 years and assuming her life expectancy to be 55 years. In view of the ratio laid down by the Hon'ble Supreme Court, stated supra, and considering the physical and mental condition of the appellant herein, this Court is of the view that it would be just and proper to grant Rs.2,000/- per month to the appellant towards attendant charges for a period of 30 years assuming her life expectancy to be 55 years and she was aged 25 years at the time of accident. Therefore, the claimant is entitled for

Rs.7,20,000/- (Rs.2,000/- 12 x 30) towards attendant charges.

16. Therefore, in all, the appellant/claimant is entitled for Rs.17,72,200/- under the following different heads:

- |                                                                           |   |                      |
|---------------------------------------------------------------------------|---|----------------------|
| 1. Pain and suffering                                                     | - | Rs.1,75,000/-        |
| 2. Loss of earnings                                                       | - | <b>Rs.30,000/-</b>   |
| 3. Attendant charges                                                      | - | <b>Rs.7,20,000/-</b> |
| 4. Extra-nourishment                                                      | - | Rs.25,000/-          |
| 5. Hospital and medical expenses -<br>(including future medical expenses) | - | Rs.2,10,200/-        |
| 6. Permanent disability                                                   | - | <b>Rs.6,12,000/-</b> |

17. Though the compensation claimed by the injured claimant before the Tribunal was only Rs.13,50,000/-, in view of the decision of the Hon'ble Supreme Court in **Nagappa vs. Gurudayal Singh and others**<sup>3</sup>, there is no restriction in M.V. Act that the compensation should be awarded only upto the claim made by the claimants. Hence, the compensation awarded by the Tribunal is enhanced from Rs.7,53,200/- to Rs.17,72,200/-. However, the appellant/injured claimant shall pay the difference of Court Fee for the excess amount of compensation of Rs.4,22,200/-.

18. The Tribunal has rightly granted interest at 7.5% per annum and the same is in consonance with the provision of

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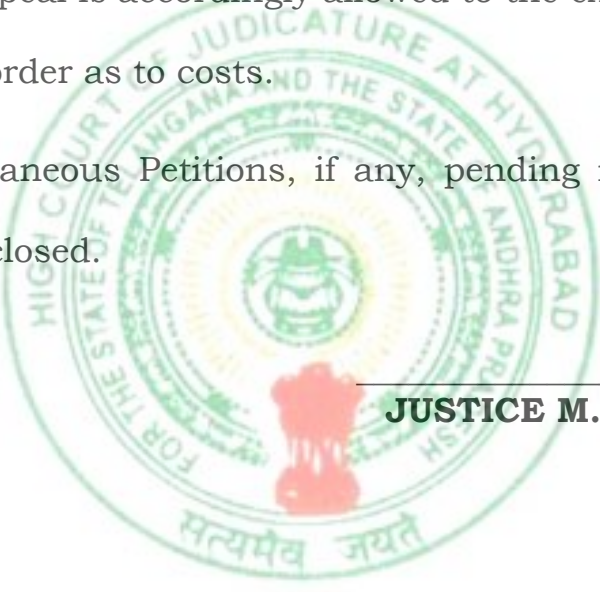
<sup>3</sup> (2003) 2 SCC 274

Section 171 of the M.V.Act and the bank rate of interest prevailing at the relevant period.

19. The respondent-Insurance Company is directed to deposit the entire compensation amount, after deducting the amounts already deposited, to the credit of the O.P. before the Tribunal, within a period of two months from the date of receipt of a copy of this order. On such deposit, the appellant is entitled to withdraw the same.

20. The appeal is accordingly allowed to the extent indicated above. No order as to costs.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed.



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**JUSTICE M.GANGA RAO**

28-09-2018  
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