

HONOURABLE MS. JUSTICE J. UMA DEVI

C.M.A. No.3870 of 2004

JUDGMENT:

The appellant before me is the claimant in O.P. No.1111 of 2001 on the file of the Motor Accidents Claims Tribunal-cum-I Additional District Judge at Khammam. As the claim laid by her against the drivers of the APSRTC buses bearing No.AP-9-Z-7333 and AP-10-Z-4935 and the management of APSRTC has been partly allowed by granting compensation of Rs.1.00,000/- she has come before this Court by preferring the present Appeal raising a specific contention that she has not been adequately compensated in respect of fracture injury received by her to her right hand in the accident dated:16.10.2000.

The parties herein after will be referred as 'petitioners' and 'respondent' Nos1. to 3 as they are referred and arrayed in O.P. No.1111/2001 for the sake of convenience.

2. The case of the petitioner as narrated in her claim petition is briefly stated as under:

The petitioner is a resident of Jayamma colony, Palvoncha village. It is her case that on 16.10.2000 at about 2.30pm, while she was traveling as a passenger in an RTC bus bearing No.AP-10-Z-4935 of Manchiryala depot, to go to Palvoncha, when the said bus reached near 12/2 culvert on B.T. road, an RTC bus bearing No.AP-9-Z-7333 of Kothagudem depot driven by its driver in a rash and negligent manner came towards the bus in which she was traveling and dashed the said bus. As the

result of it, she received grievous injury to her right hand and that the bone of the right hand was broken into pieces. Police of Tekulapally to whom information was given about the accident, registered a case against the respondent No.1 herein in Cr.No.61./2000 under section 338 IPC and investigated into. She also states that soon after the accident, she was shifted to Government Hospital, Yellandu and from there, she was taken to M.G.M. Hospital, Warangal for better treatment and there she was treated as inpatient for three months and that an amount of Rs.20,000/- was incurred by her towards medicines and treatment. She further states that, she was working as a Coolie prior to the accident and was earning Rs.100/- per day. As she received fracture injury to her right hand, she became disabled permanently and lost her source of livelihood. Therefore, she laid the claim under Motor Vehicles Act for compensation of Rs.2,00,000/- as against the drivers of both the above mentioned APSRTC buses and the management of the A.P.S.R.T.C., under whose administrative control they were working as on the date of the accident.

3. The drivers of the RTC buses bearing No.AP-9-Z-7333 and AP-10-Z-4935 remained exparte. It was only the 3<sup>rd</sup> respondent who was the Managing Director of APSRTC contested the case. As per the assertion raised by the 3<sup>rd</sup> respondent in his counter that without establishing the negligence on the part of driver of RTC bus bearing No.AP-9-Z-7333, petitioner is not entitled to any compensation from this respondent, and that the petitioner

has to prove her age, income and the disability which according to her grossly affected her earning capacity as a Coolie etc.

4. The petitioner to substantiate her claim, examined herself as PW.1 and also examined Dr. P. Kaliprasad Rao as PW.2 through an Advocate Commissioner and marked Exs.A1 to A5. No oral and documentary evidence was adduced by 3<sup>rd</sup> respondent. The Court below on close scrutiny of the evidence of PW.1 who deposed during the course of her examination that while she was proceeding towards Yellandu in an RTC bus bearing AP-10-Z-4935 of Manchiryala depot, when the said bus reached near Tekulapally village, another RTC bus bearing No.AP-9-Z-7333 came opposite to the bus in which she was travelling, in a rash and negligent manner and dashed the bus in which she was proceeding towards Yellandu and the above said accident resulted fracture injury to her right hand, and it was completely crushed. As there were multiple fractures to her right hand she was taken to Government Hospital, Yellandu, immediately after the accident, and there she gave a statement to the doctors that drivers of both the buses were at fault. Though PW.1 was cross-examined elaborately, no information useful to the respondents was elicited. The suggestion given to PW.1 that while she was boarding the bus, she fell down and sustained injury was denied by her. The learned Trial judge, on appreciation of entire evidence on record had taken a correct view that the accident dated:16.10.2000 which was the main cause for receiving of crush injury by the petitioner occurred due

to negligent driving of both the RTC buses bearing Nos.AP-9-Z-7333 and AP-10-Z-4935 by their respective drivers who were arrayed as respondent Nos. 1 and 2.

5. This Appeal is filed by the claimant in O.P. No.1111/2001 with the main contention that she has not been granted adequate compensation in respect of a crush injury received to her right hand in a road traffic accident. The fact that her right hand and bone of her right hand are broken into pieces is borne by record. The Trial judge has made an elaborate discussion in para No.8 of his judgment on this aspect. The Trial judge, on verification of PW.5-photo noticed that the condition of the petitioner is pathetic and that her right hand has become functionless. The Xerox copy of physically handicapped certificate of the petitioner which has been exhibited as Ex.A4 establishes the fact that the medical board of Khammam has issued the said certificate stating that she attained disability of 50% due to the fracture injury received to her right hand. On understanding the pathetic condition of the petitioner, and on verification of the Ex.A5-photo and the medical certificate issued by the medical board, Khammam, the Court below has awarded compensation of Rs.75,000/- towards loss of earnings; Rs.5,000/- under head of pain and suffering; and Rs.10,000/- in respect of permanent disability.

6. PW.2-medical expert seems to have deposed in his evidence that the petitioner has to undergo operation for

removal of plates. Taking note of the evidence given by PW.2, the Court below has awarded Rs.10,000/- under the head of future medical expenditure. It has been consistently contended by the petitioner that the learned Trial judge though noticed that she is suffering from disability of 50%, awarded lump sum amount of Rs.75,000/- under the head of loss of earning capacity. Admittedly, no evidence is let in by the respondents. No attempt is made by it to disprove the evidence given by P.W.1 in so far as the income she was getting as a daily labourer. Upon consideration of the evidence of PW.1 who deposed in clear terms that she is incapable of attending to coolie work due to crush injury received to her right hand, the trial Court ought to have granted reasonable compensation under the head of loss of future earnings.

The accident occurred on 16.10.2000. Even if the income of the petitioner is taken at Rs.50/- per day, annual loss of income comes to Rs.18,000/-. As the functional disability is assessed at 50% by the Medical Board, the loss of income with such disability comes to Rs.9000/- per annum. If the annual loss of income is multiplied by '16' which is the approximate Multiplier for the persons in the age group of 36-40 as per Schedule-II of M.V. Act, the loss of future income with the disability of 50% comes to  $\text{Rs.}9000 \times 16 = \text{Rs.}1,44,000/-$ .

The pain and trauma which the petitioner was subjected to suffer on account of receiving of multiple fracture injury to her

right hand though was unimaginable, and could not have been compensated in terms of money, the Court below ought to have awarded reasonable sum under the head of pain and suffering. As the amount of Rs.5,000/- awarded under the head of pain and suffering appears to be meagre and low, the same is hereby enhanced to Rs.25,000/- from Rs.5,000/-. Since it is apparent from the material on record that the petitioner has become incapable of leading her life as before, due to the crush injury received to her right hand without taking assistance of others even for attending to her normal duties, a sum of Rs.25,000/- is awarded under the head of loss of enjoyment in life.

7. The learned Trial judge taking note of the fact deposed by the PW.2-medical expert that the petitioner has to undergo another surgery in future for removal of plates inserted in the fractured right leg, has granted reasonable compensation of Rs.10,000/- under the head of future medical expenses.

The petitioner is thus, entitled to get compensation of Rs.2,04,000/-.

The particulars of compensation which she get under different heads, are as follows:

|                                                                                                                               |                           |
|-------------------------------------------------------------------------------------------------------------------------------|---------------------------|
| (1). Loss of earnings with disability of 50%                                                                                  | - Rs.1,44,000/-           |
| (2). Towards pain and suffering                                                                                               | - Rs. 25,000/-            |
| (3). Towards enjoyment of life due to permanent disability                                                                    | - Rs. 25,000/-            |
| (4). Towards future medical expenditure (which has not been revised or modified under the head of future medical expenditure) | - Rs. 10,000/-            |
|                                                                                                                               | <hr/> Rs.2,04,000/- <hr/> |

8. In the light of my above discussion, there cannot be any hesitation for me to hold the compensation claimed by the petitioner is fair and reasonable. As it is found that the claimant is able to convince the Court, there is justification in the claim made for enhancement of Rs.2,00,000/-, the appeal filed by her seeking to enhance the compensation from Rs.1,00,000/- to Rs.2,00,000/- can be allowed.

In the result, the appeal filed by the claimant in O.P.No.1111/2001 on the file of the Motor Accidents Claims Tribunal-cum-I Additional District Judge at Khammam, is hereby allowed by enhancing the compensation from Rs.1,00,000/- to Rs.2,00,000/-. The enhanced compensation is payable by respondent No.2 and respondent No.3 jointly and severally together with interest at 7.5% per annum from the date of filing of the petition till realization.

Pending Miscellaneous Petitions, if any, shall stand closed.

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JUSTICE J.UMA DEVI

Dated:09-08-2018

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C.M.A. No.3870 of 2004

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