

HON'BLE SRI JUSTICE T. AMARNATH GOUD

MA.CMA.NO: 182 OF 2014

J U D G M E N T :

This appeal arising out of the award and decree dated 05-12-2006 passed in OP.No. 426 of 2006 by the Motor Accident Claims Tribunal [III-Additional District Judge] {Fast Track Court}, Nizamabad, [for short “ *The Tribunal*”).

2. The appellant, who is the petitioner-claimant, filed this appeal, having dis-satisfied with the quantum of compensation awarded by the Tribunal on account of the injuries sustained in a motor vehicle accident on 29-12-2002 at about 02:30 a.m., near Gupta crossing, Gupta village on NH-16.

3. The brief facts of the case are that on 29-12-2002, the petitioner-claimant was traveling in the APSRTC bus bearing No. AP-10-Z-7112 from Nizamabad to Hanamakonda and at about 02:30 a.m., when the said bus was crossing Gupta village of Makloor Mandal of Nizamabad district, a DCM van bearing No. AP-25-T-7312 came at high speed in a rash and negligent manner and dashed to R & B stone on road side and later to the said APSRTC bus in which the petitioner was traveling. As a result of which, the petitioner and other inmates in the bus and DCM van sustained injuries. The petitioner sustained fracture to spine L-3 vertebra, fracture of maxilla bone and other multiple and grievous injuries on all over the body. Immediately, she was taken to

Govt.Headquarters Hospital, Nizamabad and later she took treatment in private Nursing Home and incurred an expenditure of Rs.80,000/-. The petitioner claimed that she used to get income of Rs.4,000/- per month from agriculture and Rs.3,000/- per month from milk business and she used to contribute her entire income for the family members, who are dependant on her. But on account of multiple fractures and other injuries sustained in the accident by the offending DCM van, she is not able to walk, do any work and attend her regular work, and thus, she suffered permanent disability. The petitioner, however, restricted her claim to Rs.2,00,000/- with interest @ 24% p.a. from the date of petition till its realization.

4. Before the Tribunal, the first respondent remained ex-parte. The second respondent-Insurance company resisted the claim and filed its counter denying the age, earnings, manner of accident, causing injuries to her, incurring of expenditure for her treatment and valid driving licence of the driver of RTC bus as well fitness certificate and a valid policy issued by the second respondent-Insurance company to DCM lorry bearing No. AP-25-T-7312 covering the risk of the petitioner. In the counter, the second respondent contended that two vehicles were involved in the accident, the drivers of the vehicles, owner and insurer of the said bus are proper and necessary parties and for non-joinder of them, the petition is bad and liable to be dismissed. The amount of compensation and interest as claimed thereon by the petitioner

are excessive and the company seeks protection under section 147, 149 and 170 of the Motor Vehicles Act and prayed to dismiss the claim-petition.

5. On the basis of the pleadings, the Tribunal framed the following issues for trial:

- i) *Whether the accident was occurred due to rash and negligent driving of vehicle bearing No. AP-10-z-7112 ?*
- ii) *Whether petitioner has suffered permanent disability ?*
- iii) *Whether petitioner is entitled for compensation. If so, to what amount ?*
- iv) *To what relief ?*

6. To substantiate the claim, the appellant-petitioner got examined herself as PW-1 and Dr.T. Narsing Rao, as PW-2 in support of oral evidence and got marked Exs.A-1 to A-7. No oral evidence was let-in by the second respondent but marked Ex.B-1 copy of Insurance Policy.

7. On appreciation of oral and documentary evidence placed on record, the Tribunal awarded compensation of Rs.31,000/- with proportionate costs and interest @ 7.5% p.a. from the date of filing of petition till the date of realization.

8. Heard the learned counsel for the appellant and the learned standing counsel for the second respondent-Insurance company.

9. After hearing both sides, this Court perused the award and decree impugned in this appeal. The appellant-claimant examined PW-2 Dr. T. Narsing Rao, who examined the petitioner

on 29-12-2002 and found fracture of lumbar vertebra, fracture of maxillary bone on right side, an abrasion on the right side of the face extending from right eye to the chin, lacerated wound on the right eye lid. After administering first-aid, PW-2 referred the petitioner to Hyderabad for treatment on her request. The X-rays confirmed the fractures. Ex.A-3 is the injury certificate issued by PW-2. In Ex.A-2 charge sheet, it is mentioned that the petitioner sustained grievous injuries apart from that the name of PW-2 is shown as the Medical Officer, who gave treatment to the petitioner for the injuries sustained in the accident. On considering the evidence placed on record, held that the petitioner sustained injuries, which are proved by the oral evidence of PW-2 and the documentary evidence Ex.A-2 and A-3, the Tribunal has awarded a compensation of Rs.7,500/- each for two fractures and for other two simple injuries Rs.2000/-. For two fractures and treatment in the private hospitals, an amount of Rs.5,000/- was awarded towards costs of treatment, Rs.3000/- was awarded towards medicines, Rs.2000/- was awarded towards transport charges and Rs.2000/- was awarded towards extra-nourishment. Thus, in all, the Tribunal awarded compensation of Rs.31,000/- to the petitioner with proportionate costs and interest @ 7.5% p.a. from the date of filing of the claim-petition till its realization. In view of the serious fracture injuries of third lumbar vertebra, fracture of maxillary bone on right side, an abrasion on the right side of the face extending from right eye to the chin, a lacerated wound on

the right eye-lid, the appellant-injured would have suffered and for better treatment as per the advise of PW-2 Dr. T. Narsing Rao, the appellant-injured took better treatment at Hyderabad and it does not mean that she did not incur any expenditure. Therefore, keeping in view of the tumultuous ordeal underwent by the appellant, this Court feels it appropriate to award compensation of Rs.50,000/- towards no-fault liability. The Tribunal awarded Rs.7500/- each for two fractures and the same is enhanced to Rs.15,000/- each, which comes to Rs.30,000/-. Further the Tribunal awarded Rs.2000/- each for two simple injuries and the same is just and reasonable. The appellant was awarded Rs.5,000/- towards costs of treatment and the same is enhanced to Rs.10,000/- under the said head. The other compensation amount awarded under the head of medicines, transport charges and extra-nourishment are Rs.3,000/-, Rs.2,000/- and Rs.2,000/- are quite just and reasonable. Thus, the compensation is enhanced from Rs.31,000/- to Rs.91,000/- with interest @ 7.5% per annum from the date of filing of claim-petition till its realization.

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

11. As a sequel, miscellaneous applications if any, pending in this appeal shall stand closed.

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[R E S U L T :: APPEAL IS PARTLY ALLOWED]



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