

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

MACMA No. 193 OF 2012

Judgment:

The appellant – claimant, dissatisfied with the amount of Rs.2,33,000/- granted as compensation for the injuries sustained by her, in OP No.539 of 2005, on 14.07.2006, by the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, West Godavari, at Eluru, (for short “the Tribunal”), as against the claim laid under Section 166 of the Motor Vehicles Act, 1988 (for short ‘the Act’) seeking compensation of Rs.4,00,000/-, preferred the present appeal.

2. The appellant herein is the claimant, the respondents 1 and 2 are the driver and owner of the lorry and the third respondent is the Insurance Company before the Tribunal. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the Original Petition.

3. The case of the petitioner, in brief, is that on 23.02.2005 at about 11.30 AM she along with her husband and daughter were proceeding on a Hero Honda Motor Cycle and stopped the vehicle opposite to Ashram Hospital by the side of the road in order to enter into the National Highway road to go to Agadala Lanka from Vaddigudem and at that time a lorry bearing registration No.AP 10 U 8389 coming from Tadepalligudem to Eluru side driven by its driver the first respondent in a rash and negligent manner, without blowing horn, dashed the motor cycle and ran over the petitioner and her daughter, as a result of which her daughter succumbed to injuries and the petitioner sustained multiple injuries besides crush injury on the left leg. Immediately, she was shifted to the Government Hospital, Eluru, where her left leg was amputated above the

knee and she treated in the hospital as inpatient for about two months and spent nearly Rs.1,00,000/- for treatment. The petitioner was aged about 20 years and used to earn Rs.3,000/- per month as a cooli. Hence, she claimed compensation of Rs.4,00,000/- for the injuries sustained by her.

4. The respondents 1 and 2 remained *ex parte*. The third respondent – Insurance Company filed written statement denying the averments made by the petitioner and stating that the first respondent was not having valid driving licence and the vehicle was not having valid registration and fitness certificates and hence they are not liable to pay any compensation.

5. Based on the above pleadings, the Tribunal framed three issues. On behalf of the petitioner, PWs.1 and 2 were examined and Exs.A1 to A4 were marked. On behalf of the respondents, none were examined and no documents were marked.

6. The Tribunal, on consideration of the entire oral and documentary evidence, held on issue No.1 that the accident occurred due to rash and negligent driving of the lorry by the first respondent. On issue No.2, the Tribunal taking the income of the petitioner at Rs.3,000/- per month deducted 1/3rd towards personal expenses and arrived at Rs.2,000/- per month, but not granted any amount towards loss of earnings. However, the Tribunal awarded Rs.2,33,000/- under various heads with interest at 7.5% p.a., from the date of petition till the date of realization directing the respondents 1 to 3 to pay the same jointly and severally. Aggrieved by the same, the petitioner filed the present appeal seeking enhancement of compensation.

7. The appeal was dismissed for default against the first respondent – driver of the lorry, as per the orders of this Court dated 05.06.2011.

8. Heard learned counsel for the appellant/claimant and learned counsel for the third respondent – Insurance Company.

9. Learned counsel for the petitioner submits that though the Tribunal held that the petitioner was getting Rs.3,000/- per month, it failed to calculate the compensation correctly and granted a meager compensation amount under various heads.

10. On the other hand, learned counsel for the third respondent – Insurance Company submits that the petitioner has not filed any disability certificate and medical bills and the amount awarded by the Tribunal is excessive.

11. A perusal of the record would show that though the Tribunal observed that the income of the petitioner is Rs.3,000/- per month and estimated the disability of the petitioner at 70%, it failed to calculate the amount towards loss of earnings correctly and simply awarded a sum of Rs.1,00,000/- under the said head. The said amount granted by the Tribunal towards loss of earnings is without any legal basis. Hence, accepting the said income of the petitioner, since the petitioner is aged about 20 years, as per *Sarla Verma v. Delhi Transport Corporation*¹, the appropriate multiplier to be applied for the age group of 20 to 25 is '18'. Coming to the disability sustained by the petitioner, though the contention of the learned counsel for the third respondent – Insurance Company is that the petitioner did not produce any disability certificate, admittedly, the petitioner sustained crush injuries to her left leg in the accident and subsequently her left leg was amputated above the knee.

¹ (2009) 6 SCC 121

The evidence of PW.2 coupled with Ex.A3 – wound certificate and Ex.A4 – photograph with negative, shows that the left leg of the petitioner was amputated above the knee and the disability is estimated at 70%. It is clear from the evidence of PW.2 that the petitioner cannot walk without the support of anybody. Loss of a limb causes a profusion of distress and the petitioner, aged about 20 years, has to deal with the same for the rest of her life and she might have to deal with discrimination and stigma in society due to the fact that she is an amputee. Though the petitioner did not produce any disability certificate, even according to the guidelines prescribed in the Workmen Compensation Act, the percentage of disability for amputation of leg above the knee can be taken at 60%. In the circumstances, the percentage of disability is estimated at 60%. Accordingly, the loss of earnings on account of disability is estimated at Rs.3,88,800/- ($36,000 \times 60/100 \times 18$) and the petitioner is entitled for the same. But, the Tribunal has simply granted only Rs.1,00,000/- under this head, without making any calculations. The Tribunal has granted a sum of Rs.50,000/- towards two crush injuries, Rs.10,000/- towards pain and suffering, Rs.8,000/- towards attendant charges, Rs.5,000/- towards good nourishment and Rs.50,000/- towards artificial leg. Though the petitioner did not file any medical bills, having regard to the nature of injuries and taking into consideration the fact that the petitioner was hospitalized for about four months and by relying on the decision of this Court in *Kosuru Gupteswara Rao v. Charakana Sreenu*², the Tribunal awarded Rs.10,000/- towards medical expenses. Thus, the Tribunal awarded a total sum of Rs.2,33,000/-. But, as stated supra, instead of granting Rs.3,88,800/- towards loss of earnings the Tribunal granted only

² 2005 ACJ 468

Rs.1,00,000. If the same is added the petitioner is entitled to total compensation of Rs.5,21,800/- (Rs.3,88,800/- + Rs.50,000/- + Rs.10,000/- + Rs.10,000/- + Rs.8,000/- + Rs.5,000/- + Rs.50,000/-), but the Tribunal granted only Rs.2,33,000/-. The Tribunal has not awarded any amount towards loss of amenities, future medical expenses and transport charges and if the same are added the petitioner would get more than the amount calculated above. However, since the petitioner claimed only Rs.4,00,000/-, the same is restricted to Rs.4,00,000/-.

12. Accordingly, the MACMA is allowed granting compensation of Rs.4,00,000/- with interest at 7.5% p.a., from the date of petition till realization against the respondents 1 to 3. There shall be no order as to costs.

13. As a sequel thereto, the miscellaneous petitions, if any, pending in this appeal shall stand closed.

KONGARA VIJAYA LAKSHMI, J

Date: 12th October 2018
Nsr

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI



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