

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA No.3648 of 2005

JUDGMENT:

Dissatisfied with the amount of compensation awarded by the Tribunal at Rs.40,000/- as against the claim for Rs.1,00,000/- laid under Section 166(1)(a) of the Motor Vehicles Act, 1988 (henceforth for short 'the Act') and Rule 455 of the A.P.Motor Vehicles Rules, 1989, the instant appeal is preferred by the petitioner in O.P.No.539 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal (FTC), Nizamabad at Kamareddy.

2. The appellant herein is the petitioner before the Tribunal, while the respondent Nos.1 and 2, who are the Depot Manager, Nizamabad and Managing Director of respondent Corporation, respectively.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The fact-situation occurring in the instant case is that on 31.10.1999, the petitioner along with others were traveling in a Jeep bearing No.AP 25U 2438, on the way at Gannaram cross roads, at about 9.30 a.m., one APSRTC bus bearing No.AP 9Z 5515, came from behind and dashed against the Jeep. In that accident petitioner sustained fracture injury on

her left leg and injuries on both hands, neck, head and other parts of the body. Immediately after the accident petitioner was shifted to Government Hospital, Kamareddy, and she spent Rs.25,000/- for her treatment. Prior to the accident she was doing petty business and was earning Rs.6,000/- per month and after the accident due to fracture injuries she sustained disability and loss of earnings. Therefore, she sought an amount of Rs.1,00,000/- towards compensation against 1st and 2nd respondents.

5. The respondents 1 and 2 filed counter and appeared through their counsel denying all the allegations of the petitioner, including the accident, injuries to the petitioner, expenditure towards treatment, loss of earnings and disability of the petitioner. They also alleged that the accident took place due to rash and negligent driving of the driver of the Jeep by its driver.

6. Basing on the pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry before the Tribunal, the petitioner examined herself as P.W.1 and Dr.T.Narsing Raso was examined as P.W.2 through Commissioner and Exs.A1 to A4 were marked, whereas, the respondents did not produce any evidence.

7. The Tribunal, on issue No.1, on appraisal of evidence on record, particularly, basing on the F.I.R. and charge sheet, marked as Exs.A.1 and A.2, which show that only due to the

rash and negligent manner of the driver of the Bus, the accident had occurred, and, thus, held it in favour of the petitioner.

8. On issue No.2, the Tribunal, basing on the evidence of P.W.1 and the certified copy of wound certificate marked as Ex.A.3, awarded Rs.15,000/- for one grievous injury and Rs.1,000/- for the simple injury and Rs.10,000/- towards pain and suffering. As the petitioner did not produce any medical bills or prescriptions to prove that she spent an amount of Rs.25,000/- towards medical bills as alleged by her, no amount is awarded. As the petitioner did not state anything in her evidence with regard to her income, the Tribunal, treating the petitioner as house wife fixed Rs.3,000/- per month, as contribution of the petitioner to her family by relying on the Judgment of Supreme Court in *Late Wadhwa v. State of Bihar II (2001) ACC 316*, and awarded an amount of Rs.9,000/- towards loss of earnings. Though, the petitioner claimed amount for disability sustained by her, the Tribunal did not award any amount as petitioner did not produce any other material except Ex.A4-disability certificate issued by Dr.T.Narsing Rao, to prove that she sustained permanent and partial disability. Thus, in total the Tribunal granted an amount of Rs.40,000/- towards compensation with interest @ 9% per annum from the date of petition till the date of deposit which is challenged in the instant appeal,

contending that the amount awarded by the Tribunal was very meager and sought to enhance the compensation.

9. Heard learned counsel for the appellant and Sri N.Vasudeva Reddy, learned Standing Counsel for respondent Corporation.

10. Since the finding on issue No.1 is of no consequence to adjudicate upon the controversy herein, findings recorded on issue No.2 are taken up directly.

11. Now the only point that arises for consideration is, whether the compensation awarded by the Tribunal is just and adequate?

12. Learned counsel for the appellant submits that the compensation awarded towards pain and suffering is not adequate; that the amount awarded towards loss of earnings and towards simple injury is lower side and the same require to be enhanced. He also submits that the appeal filed by the respondents Corporation in CMA (SR) No.8638/2007, filed against the same order in OP.No.539/2000 which was impugned in this appeal, was dismissed.

13. On the other hand learned Standing Counsel Sri N.Vasudeva Reddy, appearing for respondent Corporation submits that no evidence is produced regarding expenditure incurred by the petitioner towards medical expenditure; and that there is no proof of income and already amounts were

awarded towards injuries suffered and pain and suffering, as such, no interference is called for.

14. In this case a perusal of the award shows that the petitioner has not produced any record regarding expenditure incurred by the appellant for medical expenses and he also not produced any record regarding loss of earnings. Admittedly, the Tribunal has not believed Ex.A4-disability certificate issued by the doctor.

15. In this case it is to be seen that for grievous injuries i.e. fracture on left pelvis an amount of Rs.15,000/- was awarded. For the grievous injury the petitioner was hospitalized for three months, as such, this Court is of the opinion that the amount granted towards the same is not commensurate to the injury suffered by the appellant, and as such, this Court is of the opinion that a further amount of Rs.20,000/- can be awarded under this head.

16. As far as loss of earnings is concerned, though the appellant has not produced any evidence, the Tribunal granted an amount of Rs.9,000/- towards loss of earnings, taking into account facts and circumstances of the case. As such no interference is called for.

17. Regarding medical expenditure the petitioner did not produce any medical bills to prove that she spent an amount of Rs.25,000/-, as such, the same cannot be granted.

18. With regard to simple injury Rs.1,000/- was granted and the same can be enhanced to Rs.5,000/-.

19. In the result, the appeal is allowed in part, and the award and decree dated 11.02.2005 passed by the Tribunal in OP.No.539 of 2000 is modified, enhancing the compensation to Rs.64,000/- (Rupees sixty four thousand only) from Rs.40,000/-, with interest at the rate 7.5% on the enhanced amount of Rs.24,000/- from the date of petition till realization. There shall be no order as to costs.

20. As a sequel thereto, miscellaneous petitions, if any pending in this appeal, stand disposed of.

A.RAJASHEKER REDDY, J

11.02.2019
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