

THE HON'BLE SRI JUSTICE T. AMARNATH GOUD

M.A.C.M.A.Nos.1265 of 2008 & 2483 of 2009

COMMON JUDGMENT:

1 These appeals are filed under Section 173 of M.V. Act, assailing the judgment and award dated 18.10.2007 passed in O.P.No.204 of 2004 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad.

2 The facts that led to the filing of this appeal are as follows:

3 For the sake of convenience, the parties to these appeals, shall hereinafter, be referred to as they were arrayed before the Tribunal corresponding to MACMA No.1265 of 2008.

4 On 07.09.2002 the petitioner, aged about 5 years, while alighting the school bus bearing No.AP 7 W 1586 at her house after the school hours, the driver of the said bus moved the bus negligently, thereby, the petitioner fell down and the bus ran over her right leg causing loss of two toes besides causing disability of 40%. The petitioner contends that she cannot walk and run like others and her future prospects have been impaired severely and therefore she filed the petition claiming compensation of Rs.6.00 lakhs. The crime vehicle was insured with the second respondent under Ex.B.1 policy and hence both the respondents are jointly and severally liable to pay compensation to her.

5 First respondent – driver of the bus remained *ex parte*. Second respondent filed counter denying the material averments made in the petition inter *alia* contending that the accident occurred due to the negligence of the petitioner – girl and that the insurance company is not liable to pay any compensation and that the compensation claimed is on higher side.

6 During the course of trial on behalf of the petitioner, P.Ws.1 to 3 were examined and Exs.A.1 to A.36 were marked. On behalf of the second respondent – insurance company, Ex.B.1 policy was marked.

7 Having appreciated the material available on record, the Tribunal arrived at a conclusion that the accident occurred due to rash and negligent driving of the driver of the bus and allowed the petition in part by awarding compensation of Rs.4,65,000/- and directed the respondent Nos.1 and 2 to deposit the same jointly and severally with interest at 7.5% p.a.

8 Being not satisfied with the said amount of compensation, the claimant filed MACMA No.1265 of 2008 and being aggrieved by the award and judgment, the insurance company filed MACMA No.2483 of 2009.

9 Heard the learned counsel for the petitioner and the learned counsel for the second respondent.

10 The point that falls for determination in these appeals is:

“Whether the compensation awarded by the Tribunal is just and reasonable or not?”

MACMA No.1265 OF 2008:

11 The finding of the Tribunal that the accident occurred due to the rash and negligent driving by the driver of the bus bearing No.AP 7 W 1586 became final in view of non-filing of appeal or cross-objections by the respondent Nos.1 and 2. Hence I am of the considered view that the accident occurred due to the rash and negligent driving of the driver of the bus bearing No.AP 7 W 1586, which resulted injuries to the petitioner.

12 As per the evidence of P.Ws.2 and 3, the petitioner sustained grievous injury coupled with deformity and disability, that the petitioner lost middle toe and greater toe coupled with stiffness at angle joint loss of sensation of other three toes and that the petitioner will never be able to regain normal movement of right foot and ankle. According to P.W.2, the petitioner cannot walk or play like any other normal child, will never walk fast or run in the rest of her life and that she cannot move or work like other people. In support of her case, the petitioner filed voluminous documentary evidence in the form of medical records.

13 Taking into consideration the nature of injuries sustained by the petitioner, the Tribunal has rightly awarded an amount of Rs.50,000/- towards fracture of right limb. In my considered view the petitioner is entitled to Rs.50,000/- towards pain and suffering instead of Rs.10,000/- as awarded by the Tribunal. The Tribunal awarded Rs.2.00 lakhs towards disability. But keeping in mind the humiliation caused to the petitioner due to the accident, she is entitled to Rs.2,80,000/- and

Rs.25,000/- towards loss of amenities instead of Rs.20,000/- and Rs.20,000/- towards nutritious food and transport and assistance instead of Rs.10,000/- as awarded by the Tribunal. The compensation awarded by the Tribunal under the remaining heads is just and reasonable and hence needs no interference.

14 Thus, in all, the amount of compensation to which the petitioner is entitled, is Rs.6.00 lakhs as follows:

Sl.No.	Name of Head	Awarded by Tribunal	Awarded by this Court
01.	Fracture of right limb	Rs. 50,000/-	Rs. 50,000/-
02.	Pain and suffering	Rs. 10,000/-	Rs. 50,000/-
03.	Loss of middle & greater toes	Rs. 25,000/-	Rs. 25,000/-
04.	Disability quantified as one time compensation	Rs.2,00,000/-	Rs.2,80,000/-
05.	Medical bills	Rs.1,00,000/-	Rs.1,00,000/-
06.	Loss of amenities	Rs. 20,000/-	Rs. 25,000/-
07.	Loss of future prospects	Rs. 50,000/-	Rs. 50,000/-
08.	Towards nutritious food, transport and assistance	Rs. 10,000/-	Rs. 20,000/-
Total		Rs.4,65,000/-	Rs.6,00,000/-

15 The bus bearing No.AP 7 W 1586, which belongs to the first respondent, was insured with the second respondent as on the date of accident. Absolutely there is no material on record to show that the first respondent had violated the terms and conditions of Ex.B.1 insurance policy. Hence the respondent Nos.1 and 2 are jointly severally liable to pay compensation of Rs.6.00 lakhs to the petitioner together with interest at 7.5% p.a.

MACMA No.2483 OF 2009:

16 Since the insurance company filed this appeal questioning the quantum of compensation awarded by the Tribunal, it is needless to mention that MACMA No.1265 of 2008, which was filed as against the very same judgement and award of the Tribunal below and which also arose out of the same accident, filed by the claimant seeking enhancement of the compensation, has been allowed enhancing the compensation awarded by the Tribunal from Rs.4,65,000/- to Rs.6.00 lakhs. Hence for the reasons recorded above, this Court is of the opinion that MACMA No.2483 of 2009 lacks merits and *bona fides* and is liable to be dismissed.

17 Accordingly MACMA No.1265 of 2008 is allowed in part, the amount of compensation awarded by the Tribunal is enhanced from Rs.4,65,000/- to Rs.6.00 lakhs with interest at 7.5% p.a. throughout. The respondent Nos.1 and 2 are directed to deposit the compensation amount jointly and severally. Consequently MACMA No.2483 of 2009 is dismissed. No order as to costs.

18 As a sequel, miscellaneous petitions pending in these appeals, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 15.7.2019.

Kvr