THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.3117 OF 2005

JUDGMENT:

This appeal is filed by the appellant/claimant aggrieved by the Order and Decree dated 25.07.2005 passed in O.P.No.255 of 2002 by the Principal Motor Accidents Claims Tribunal at Nalgonda (for short, the Tribunal).

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

3. The brief facts of the case are that on 18.09.2000 the petitioner along with her co-labourers started from Pulicherla Village in a lorry bearing No.AHH-3263 in order to go to Halia for the purpose of plucking of sweet oranges from a garden. At about 8.00 a.m. after crossing Peddavoora Village, the driver of the lorry drove it in a rash and negligent manner due to which the lorry turned turtle. As a result, the petitioner sustained fracture to left knee, injuries to left hip joints and head and other parts of the body. Immediately after the accident the petitioner was shifted to the Osmania General Hospital, Hyderabad, for treatment. The accident occurred solely due to the rash and negligent driving of the lorry by its driver. Prior to the accident, the petitioner was hale and healthy and was earning Rs.1,500/- per month by doing labour work and contributing the same for the family. Hence, the petitioner filed

above OP against respondent Nos.1 and 2, the owner and the insurer of the lorry, seeking compensation of Rs.1,00,000/-.

4. Before the Tribunal, respondent No.1 remained *ex parte.* Respondent No.2 filed its counter denying the averments of the claim petition and contended that the driver of the lorry was not having valid and effective driving licence to drive the lorry as on the date of the accident; that he was not permitted by the owner of the lorry to drive the lorry; that the petitioner was traveling in goods lorry as an unauthorized passenger and that the amount claimed is excessive and prayed to dismiss the claim petition.

5. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the lorry and awarded total compensation of Rs.1,500/- for the injury sustained by her, with interest @ 9% per annum from the date of petition till the date of realization, fixing the liability against respondent No.1 alone and the claim against the 2nd respondent is dismissed. Dissatisfied with the quantum of compensation, the appellant/claimant filed the present appeal, seeking enhancement of the same.

6. Heard Sri T.Viswarupa Chary, learned counsel appearing for the appellant, and Sri Mukund Reddy, learned counsel representing Sri Narsi Reddy Teegala, learned standing counsel appearing for the 2nd respondent/insurance company. Perused the material on record.

7. Sri T.Viswarupa Chary, learned counsel for the appellant submitted that the compensation amount of Rs.1,500/- granted by the Tribunal as against the claim of Rs.1,00,000/- is very meagre. Therefore, he prayed to enhance the compensation awarded by the Tribunal and to direct the 2nd respondent/insurance company to pay the compensation amount at the first instance to the appellant and recover the same from the 1st respondent/owner of the crime vehicle.

8. Sri Mukund Reddy, learned counsel representing Sri Narsi Reddy Teegala, learned Standing Counsel for the 2nd respondent/insurance company, submitted that the Tribunal passed a well reasoned order and that the claimant is not entitled for any enhancement of compensation, as she was a gratuitous passenger and that the amount awarded by the Tribunal is just and proper and needs no enhancement and prayed to dismiss the appeal by confirming the order passed by the Tribunal.

9. In **Poonam's case** (supra), the Apex Court held that even if a larger number of passengers than was permitted under the terms of the insurance policy were being carried in the vehicle, it could not be said that the insurance company would stand exonerated from its liability because the vehicle was insured for third party coverage for unlimited liability and that the carrying a larger number of passengers than was permitted in terms of the insurance policy, did not amount to breach of the terms and

conditions of the policy and the insurance company would still be liable since the vehicle was legally insured. The Apex Court further held that the total amount of compensation payable should be deposited by the insurance company which could be proportionately distributed to all the claimants, who could recover the balance of the compensation amounts awarded to them from the owner of the vehicle and that having regard to the beneficial object of the Motor Vehicles Act, 1988, it would be proper for the insurer to satisfy the award and to recover the amount from the owner, without taking recourse to a separate suit, from the executing court itself.

10. With regard to the quantum of compensation is concerned, this Court feels that the compensation amount of Rs.1,500/- awarded by the Tribunal for the injury sustained by the claimant is very meager. In the facts and circumstances of the case, this Court feels just and proper to enhance the compensation amount of Rs.1,500/- to Rs.5,000/-. Insofar as the interest is concerned, for the amount awarded by the Tribunal, interest of 9% shall continue and with regard to the enhanced amount, interest of 7.5% shall be computed.

11. With regard to the fixing of liability is concerned, having regard to the submissions made by the learned counsel for the appellant and in view of the decision reported in **Poonam's case** (supra), this Court feels that it would be just and proper to direct the 2nd respondent/insurance company to pay the compensation amount at the first instance and recover the same

from the 1st respondent/owner of the crime vehicle. Except the said modification, the order of the Tribunal remains unchanged.

12. In the result, the Motor Accident Civil Miscellaneous Appeal is partly allowed by enhancing the compensation amount awarded by the Tribunal from Rs.1,500/- to Rs.5,000/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of petition till realization. The 2nd respondent/insurance company is directed to pay the enhanced compensation amount along with proportionate costs and interest at the first instance and recover the same from the 1st respondent/owner of the crime vehicle. On such deposit, the appellant is permitted to withdraw the entire amount. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 25th September, 2019

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