

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

I.A.No.2 OF 2019 IN M.A.C.M.A. No.2891 of 2017;

M.A.C.M.A. No.2891 of 2017;

AND

M.A.C.M.A. No.2690 of 2018

COMMON JUDGMENT:

Since both the appeals arise out of an Award dated 21.04.2017 passed in M.V.O.P.No.782 of 2000 by the Motor Accidents Claims Tribunal-cum-Principal District Judge, Nalgonda (for short, the Tribunal), they are being disposed of by this common judgment.

M.A.C.M.A.No.2891 OF 2017:

2. This appeal is filed by the appellant/claimant on the ground that the Tribunal awarded meager compensation of Rs.12,96,270/- against the claim of Rs.19,00,000/- for the injuries sustained by her in a road accident that occurred on 20.03.1999.

I.A.No.2 OF 2019 M.A.C.M.A. No.2891 of 2017:

3. The appellant/claimant filed this application to receive certain documents as additional evidence and mark them as exhibits.

M.A.C.M.A.No.2690 OF 2018:

4. This appeal is filed by the appellant/RTC on the ground that the amount granted by the Tribunal is excessive.

5. For the purpose of convenience, the parties are hereinafter referred to as the claimant and the RTC.

6. The brief facts of the case are that on 20.03.1999, while the claimant and her children were travelling in the RTC bus bearing No.AP10Z 2229 from Dilsukhnagar to Nalgonda, and when the bus reached near Anneparthi Village, due to the rash and negligent driving of the driver of the bus and jerks and jumps, the claimant fell down in the bus itself and received grievous injury to her back. She filed the aforesaid O.P claiming compensation of Rs.19,00,000/- for the injuries sustained by her.

7. Before the Tribunal, the RTC filed counter denying the allegations and contended that there is no rash and negligent on the part of the driver of the bus and that the amount claimed by the claimant is highly excessive and that it is not liable to pay any compensation and prayed to dismiss the claim petition.

8. 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 bus and awarded total compensation of Rs.5,00,000/- under various heads, with interest @ 9% per annum, by order dated 16.11.2002. Dissatisfied with the quantum of compensation, the claimant filed CMA.No.3121 of 2003 before this Court seeking enhancement of compensation. In the said CMA, she filed CMAMP.No.1804 of 2005 stating that she availed extraordinary leave from the date of accident till 03-10-2004 and though she joined duty in November 2004, she could not perform her duties due to her medical condition, which resulted in loss of sensation

below the waist to foot and lost control over her bladder and bowel and life long physiotherapy and treatment was needed; that she was looked after by her younger daughter till her marriage in 2002 and thereafter, she appointed a full time attendant incurring heavy expenses; that though her services were regularized on compassionate and sympathetic grounds, she would have got promotion as Senior Assistant in 2000 itself; that though she was entitled to get promotion as Senior Assistant as well as Superintendent, she could not avail those benefits and ultimately, she was retired from service on 30-06-2012; and that she continued to be in bed even after passing the award by the Tribunal. Hence, she sought to give her an opportunity to adduce evidence with regard to her continuous treatment. This Court, by judgment dated 16.11.2015, allowed CMA No.3121 of 2003 and remanded the matter to the Tribunal, for the purpose of considering enhancement of compensation, basing on the evidence to be adduced by the claimant in that regard.

9. After remand, the claimant filed Exs.C.1 to C.3 before the Tribunal to prove her continued disability and medical treatment. By taking into consideration the same, the Tribunal awarded total compensation of Rs.12,96,270/-, excluding sum of Rs.5,00,000/- awarded earlier, under various heads with interest @ 6% per annum from the date of award till the date of realization. Challenging the same, the claimant filed M.A.C.M.A.No.2891 of 2017 seeking to enhance the compensation, while the RTC filed M.A.C.M.A.No.2690 of 2018 seeking to reduce the compensation.

10. Sri Chandrasekhar Reddy Gopireddy, learned counsel for the claimant, submits that in the accident, the claimant sustained grievous spinal injury, fracture of D-12 (dorsal vertebra No.12 in the spinal chord fractured) and there is a wedge compression of the spine at D-12 level, as such, she became paraplegic, having lost the sensation below the waist portion upto toes, she lost control over bladder and bowel, lost power in lower limbs and she cannot move on her own and unable to attend any day-to-day activities without support of an attendant. He further submits that due to paraplegic condition, the claimant had to avail extraordinary leave on loss of pay for about five years, due to which, she incurred huge monetary loss. He further submits that the Tribunal granted a meager interest of 6% per annum, instead of 7.5% per annum, which is the prevailing bank rate of interest during that time, that too, from the date of award instead of date of filing the petition. Basing on the above submissions, he prays to enhance the compensation amount.

11. Sri A.Ravi Babu, learned Standing Counsel for the RTC, submits that parties cannot adduce any additional evidence at appeal stage, unless they show that, in spite of due diligence, they could not produce the evidence they sought to produce now and such documents are required to enable the Court to pronounce proper judgment and he seeks to dismiss I.A.No.2 of 2019. In this regard, he relied on a judgment of this Court in **K.Chengalraya**

Chetty Vs. Gomatheeswari¹. He further submits that after the accident, the claimant her duties and subsequently retired from service on attaining the age of superannuation and hence, the Tribunal ought not to have considered the disability at 100%. Apart from the same, the Tribunal granted excess compensation towards physiotherapy bills, and loss of earnings. Basing on the above submissions, he seeks to reduce the amount of compensation Awarded by the Tribunal.

12. First I would like to deal with the merits in I.A.No.2 of 2019, which was filed by the claimant, seeking to receive additional evidence. In **K.Chengalraya Chetty**'s case (supra), it has been held that *'Courts should be cautious and must always act with great circumspection in dealing with claims for letting in additional evidence. The appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances... The parties are not entitled, as of right, to the admission of such evidence. The provision does not apply when, on the basis of the evidence on record, the appellate court can pronounce a satisfactory judgment'*. It is clear from the above that parties to an appeal are not entitled, as a matter of right, to produce additional evidence, unless they show that, in spite of due diligence, they could not produce such documents and such documents are required to enable the Court to pronounce proper judgment. In the present case, the claimant

¹ 2014 (6) ALD 236

was afforded such an opportunity in pursuance of the judgment dated 16.11.2015 in CMA.No.3121 of 2003. In spite of the same, the claimant is seeking to adduce additional evidence before this Court at appeal stage, which cannot be permitted in view of the law laid down by this Court in **K.Chengalraya Chetty's** case (supra). Therefore, the application is dismissed.

13. Coming to the merits in the appeals with regard to loss of earnings, the claimant claimed a sum of Rs.4,48,804/- for the loss sustained to her in respect of her leave period i.e., a period of four years and ten months. The Tribunal took into consideration Exs.C.1 and C.2 and Ex.X.1 and also the evidence of P.W.7, Assistant Director in DEO Office, and accepted the claim of the claimant and granted Rs.1,98,804/- by excluding Rs.2,50,000/- already granted under the earlier award. Though the learned counsel for the claimant argued before this Court that due to the injuries the claimant was bedridden and could not attend the job, as per the records, the claimant joined the service and retired on 30.06.2012 on attaining the age of superannuation. Hence, the contention of the learned counsel for the claimant in this regard is rejected.

14. Coming to the interest aspect, the learned counsel for the claimant pointed out that the Tribunal granted meager interest @ 6% per annum, that too, from the date of award, instead of date of filing the claim petition. It is settled law that the Courts have to grant interest basing on the prevailing bank rate of interest.

Hence, grant of interest @ 6% per annum by the Tribunal in the year 2017 is meager and the same is enhanced to 7.5% per annum, which is the prevailing rate of interest at that time. Coming to the aspect of granting interest from the date of award is concerned, the Tribunal is not justified in awarding so. Hence, the said finding is set aside and the interest @ 7.5% per annum is hereby granted from the date of petition till realization. Except the said modification, the award passed by the Tribunal shall remain unchanged.

15. In the result, M.A.C.M.A.No.2891 of 2017 is partly allowed to the extent of enhancing the rate of interest from 6% per annum to 7.5% per annum from the date of petition till the date of realization; and I.A.No.2 of 2019 in M.A.C.M.A.No.2891 of 2017 as well as M.A.C.M.A.No.2690 of 2018 are dismissed. Miscellaneous petitions pending, if any, shall stand closed. No costs.

Date: 10-01-2020
TJMR

T.AMARNATH GOUD, J