

THE HON'BLE SMT. JUSTICE P.MADHAVI DEVI

M.A.C.M.A. No.366 of 2016

JUDGMENT:

This appeal is filed by the injured/petitioner in the Motor Vehicle Accident that occurred on 17.05.2009, seeking enhancement of the compensation as awarded vide order dated 28.10.2014, passed in MVOP No.305 of 2009 by the Chairman, MACT-cum-Principal District Judge at Adilabad and also to direct the 2nd respondent to first deposit the entire amount of compensation and recover the same from the 1st respondent herein.

2. Heard. Perused the record.

3. Initially the petitioner filed claim petition seeking compensation of Rs.1,00,000/- and later as per orders in I.A.No.564 of 2010 dated 22.11.2010, the claim amount was enhanced to Rs.3,00,000/-.

4. Brief facts leading to the filing of the present appeal are that the claimant was travelling in an auto bearing No.AP 01 V 9201, when the accident took place

and the claimant received grievous injuries. Immediately after the accident, the injured was shifted to Government Hospital, Nirmal and after first aid, she was shifted to Sanjeevan Multi-Specialty Hospital for treatment of fractures by fixing K-wires, screws and nails under the supervision of Dr.Javed and was discharged with an advice to take complete bed rest for six months. The injured has submitted medical bills in proof of the said contention and the Tribunal has accepted the same and awarded an amount of Rs.1,62,795/- vide orders dated 28.10.2014. Seeking enhancement of the compensation, the claimant has filed the present appeal.

4. Learned counsel for the appellant submits that the injured was an agriculturist and has claimed monthly income of Rs.4,000/-, whereas the Tribunal has considered her notional income at Rs.1,500/- per month. The appellant seeks enhancement of amount awarded also under the heads of travelling expenditure and extra nourishment.

5. Though notices are served on the respondents, none appeared for the respondents No.1 and 2.

6. This Court finds that the Hon'ble Supreme Court in the case of **Kirti and another Vs. Oriental Insurance Company Limited**¹ has adopted Rs.5,500/- per month as notional income of a housewife, whereas in the case on hand, the injured is an agriculturist and hence, this Court is of the considered opinion that Rs.4,000/- per month, as claimed by the petitioner, is reasonable instead of Rs.1,500/- as taken by the Tribunal and the compensation should be awarded accordingly. It is also deemed fit and proper to enhance the amount awarded towards transportation and extra nourishment to Rs.8,000/- and Rs.10,000/- respectively.

In the light of the above mentioned discussion, the appellant is entitled to the following amounts:

	HEAD	COMPENSATION AWARDED
1	Income	Rs.4,000/- per month

¹ (2021) 2 Supreme Court Cases 166

2	Multiplier	18
3	Disability and loss of earning capacity	30%
4	Loss of earnings	4,000/- (X) 18 Multiplier (X) 12 months (X) 30% = Rs.2,59,200/-
5	Medical expenses	Rs.56,595/-
6	Transportation	Rs.8,000/-
7	Extra-nourishment	Rs.10,000/-
	Total Compensation	Rs.3,33,795/- along with interest @ 7.5%per annum from the date of filing of the claim petition till realization.

7. The another finding of the Tribunal, which is challenged before this Court, through this appeal is that the respondent No.1 has violated the policy conditions as he did not possess a valid driving licence and accordingly the police filed charge-sheet for the offence under Section 338 of IPC and Section 3 read with Section 181 of Motor Vehicles Act against driver of the crime vehicle and therefore, the 2nd respondent/insurance company is not liable to pay any compensation except for a sum of Rs.56,595/-.

8. It is submitted that the Hon'ble Supreme Court in a case of **Shamanna and another Vs. Divisional Manager, Oriental Insurance Company Limited and others** ² has observed that the driver of the jeep had no valid driving licence at the time of the accident and there was violation of the terms of the insurance policy and in such circumstances directed the insurance company to pay the compensation to the claimants and granted liberty to the insurance company to recover the same from the owner of the offending vehicle. Accordingly, this Court directs the 2nd respondent to pay the compensation as enhanced by this Court to the claim petitioner and to recover the same by invoking execution proceedings from the 1st respondent, if so advised.

9. In the result, this Civil Miscellaneous Appeal is allowed without costs and the Award dated 28.10.2014, passed in MVOP No.305 of 2009 by the Chairman, MACT-cum-Principal District Judge at Adilabad is modified by

² (2018) 9 Supreme Court Cases 630

awarding a total compensation of Rs.3,33,795/- (Rupees three lakhs, thirty three thousand, seven hundred and ninety five only) along with costs and interest @ 7.5%per annum from the date of filing of the claim petition till realization directing the 2nd respondent to pay the compensation as enhanced by this Court to the claim petitioner and to recover the same from the 1st respondent by way of execution proceedings if it is so advised. As the compensation payable to the claimants as per law was found to be higher than the original claim of Rs.3,00,000/-, the enhanced compensation of Rs.33,795/- is granted subject to payment of Court fee thereon by the claimant. The 2nd respondent insurance company is directed to deposit the compensation amount awarded within 60 days from the date of receipt of this judgment, after giving credit to deposit of amount, if any, already made. On such deposit, the claimant is permitted to withdraw the same without furnishing any security.

10. Pending miscellaneous petitions, if any, in this
MACMA shall stand closed.

JUSTICE P.MADHAVI DEVI

Date: 16.06.2022

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