

THE HON'BLE SMT. JUSTICE M.G. PRIYADARSINI

M.A.C.M.A. Nos.4060 of 2014 & 1437 of 2014

COMMON JUDGMENT:

M.A.C.M.A.No.4060 of 2014 is preferred by the appellant, who is the claimant before the Tribunal, assailing the order and decree of the Chairman, Motor Accidents Claims Tribunal-cum-XI Additional Chief Judge (FTC), City Civil Court, Hyderabad made in M.V.O.P. No.835 of 2011 dated 04.10.2013 on the ground of inadequacy of compensation.

2. M.A.C.M.A. No.1437 of 2014 is preferred by the appellants-Andhra Pradesh State Road Transport Corporation, who are the respondent Nos.1 and 2 before the Tribunal, assailing the very same order and decree of the Tribunal on the ground that the impugned Order and decree of the trial Court are contrary to law, evidence on record and illegal and that the compensation awarded by the Tribunal is excessive and exorbitant.

3. The claimants filed the M.V.O.P. under Section 166 of the Motor Vehicles Act, alleging that on 18.01.2010 at about 20.00

hours the petitioner left her house to Secunderabad railway station along with her son in an auto bearing No. AP.10.U.9903 and when they reached near Sagar Enclave in between centre point and diamond point at Bowenpally, one RTC bus bearing No. AP.28.Z.1977 came in opposite direction from Tad bund with rash and negligent manner and hit their auto, due to which, the petitioner received fracture injuries to her right leg. Immediately she was shifted to Yashoda Hospital, Secunderabad for treatment. Therefore, she laid a claim for Rs.8,00,000/- towards compensation under various heads.

4. Respondents filed counter disputing the manner of accident and the nature of injuries sustained by the petitioner.

5. In view of the above pleadings, the tribunal framed the following issues:

1. Whether the pleaded accident injuries sustained to the petitioner P.Varalaxmi, due to the rash and negligent driving of the driver of APSRTC bus bearing No. AP 28 Z 1977?
2. Whether the petitioner is entitled to any compensation, and if so, at what quantum and what is the liability of the respondents?
3. To what relief?

6. In order to prove the issues, PWs.1 to 6 were examined and got marked Exs.A1 to A8 on behalf of the petitioner. On behalf of the respondents-Corporation, no witnesses were examined and no document was marked.

7. Considering the claim and the counter filed by the Corporation and on evaluation of the evidence, both oral and documentary, the learned Tribunal has allowed the O.P. in part, directing the respondents-Corporation to pay the compensation of Rs.5,96,000/- with interest @ 7.5% per annum from the date of filing of the petition till the date of deposit or realisation with proportionate costs.

8. Heard the learned counsel for the claimant and the learned Standing Counsel for respondents-Andhra Pradesh State Road Transport Corporation.

9. The learned counsel for the claimant has submitted that although the claimant, by way of evidence of P.Ws.1 to 6, and Exs.A.1 to A.8, established the fact that she sustained permanent disability due to the injuries caused in the accident, the Tribunal awarded meagre amount.

10. On the other hand, the learned Standing Counsel for the respondents-Corporation contended that the Tribunal failed to appreciate the oral and documentary evidence and misconstrued the documents and that the compensation awarded by the Tribunal is excessive and exorbitant.

11. With regard to the manner of accident, the Tribunal after evaluating the evidence of PWs.1 to 6 coupled with the documentary evidence on record, rightly came to the conclusion that the accident was occurred due to the rash and negligent driving of the offending vehicle.

12. With regard to the compensation, the petitioner deposed that she sustained bleeding crush injuries to her right leg and all over the body. Immediately she was shifted to Yashoda Hospital at Secunderabad and the doctors attending on her have diagnosed that she suffered traumatic amputation of right lower limb at the level of just below knee and clinically deformity of right thigh. She took treatment as in-patient from 18.01.2010 to 25.01.2010 and the doctors conducted surgery on 19.01.2010 and removed her right lower limb up to above knee. Further the doctors advised her to take complete bed rest for period of three months with regular medication and

follow up treatment. She incurred an amount of Rs.1,50,610/- to her treatment and the doctors advised her to fix the artificial leg to her stump for movements. Petitioner deposed that she sustained 80% partial and permanent disability and the disability certificate was issued by the District Medical Board, King Koti, Hyderabad to that effect.

13. The evidence of PW-3 Dr.Akhil Dadi, Orthopaedic Surgeon in Yashoda Hospital shows that the petitioner was admitted in their hospital on 18.01.2010 with a history of road traffic accident and on clinical examination found that she sustained traumatic amputation right lower limb below knee with fracture of shaft femur and that on 19.01.2010 surgery was conducted for above knee amputation under spinal anesthesia and she was discharged on 25.01.2010 with advice of medication and review and the above injury is grievous in nature.

14. PW-4 V.Gopi Krishna, who is the billing in-charge of Yashoda Hospital, Secunderabad stated that the bill of Rs.1,28,592/- was issued by their hospital. PW-5 K.Ram Mohan, in-charge in Med-plus pharmacy, Old Bowenpally, Secunderabad deposed that Ex.A-6 bill numbers 3 to 31 for

Rs.18,978/- were issued by their pharmacy and the same were purchased by the petitioner in different dates.

15. PW-6 Premjit Kumar Sinha who is working as Prosthetist and Orthotist in Endolie India Limited at Banjara Hills, Hyderabad stated that the petitioner approached them on 4.5.2013 and they clinically examined and advised her to suitable artificial limb and he issued Ex.A-7 for an amount of Rs.2,79,900/- approximately and it requires periodic replacement of the component, which may cost around a sum of Rs.25,000/- to Rs.40,000/- per year.

16. Considering the evidence available on record, the Tribunal awarded compensation of Rs.60,000/- towards medicines, attendant, transportation and extra nourishment which is very less and as such, this Court is inclined to award an amount of **Rs.1,00,000/-** towards medicines and treatment charges, **Rs.15,000/-** towards attendant charges, **Rs.25,000/-** towards transportation and extra nourishment. Further the Tribunal rightly awarded an amount of **Rs.1,00,000/-** towards purchase of artificial limb and **Rs.40,000/-** is awarded towards pain and sufferance and the same are not disturbed.

17. Coming to the compensation awarded towards the disability sustained by the petitioner, she has sustained 80% partial and permanent disability and the disability certificate was issued by the District Medical Board, King Koti, Hyderabad to that effect. While calculating the compensation towards disability, the Tribunal had taken the income of the petitioner at Rs.3,750/- per month, which appears to be too meagre and hence, the income of the petitioner can be taken at Rs.4,500/-. However, in the light of the principles laid down by the Apex Court in ***National Insurance Company Limited Vs. Pranay Sethi and others***¹, the claimant is also entitled to the future prospects and since the deceased was aged about 53 years at the time of accident, 10% of the income is added towards future prospects. Then it comes to Rs.4,950/-. Since the petitioner was aged about 53 years at the time of accident, the appropriate multiplier in the light of the judgment of the Apex Court in ***Sarla Verma v. Delhi Transport Corporation***² would be “11”. Then the compensation awarded towards 80% of disability would be Rs.4,950 x 12 x 11 x 80% = **Rs.5,22,720/-**.

¹ 2017 ACJ 2700

² 2009 ACJ 1298 (SC)

Thus in all the petitioner awarded an amount of Rs.8,02,720/- which can be rounded off to **Rs.8,00,000/-**.

18. Coming to the M.A.C.M.A.No.1437 of 2014 filed by the respondents-Corporation, the Tribunal rightly held that since the involvement of the RTC bus bearing No. AP.28.Z.1977 is proved, respondent Nos.1 and 2 are vicariously liable for the rash and negligent act of driving of their driver. There are no grounds to interfere with the findings given by the Tribunal in this aspect. Hence, the appeal filed by the respondents-Corporation is liable to be dismissed.

19. In the result, the M.A.C.M.A. No.4060 of 2014 is allowed by enhancing the compensation amount awarded by the Tribunal from Rs.5,96,000/- to **Rs.8,00,000/-**. The enhanced amount shall carry interest at 7.5% p.a. from the date of this Order till the date of realization against the respondent Nos. 1 and 2. The amount shall be deposited by the respondents-Corporation within a period of one month from the date of receipt of a copy of this order. On such deposit of compensation amount, the claimant is at liberty to withdraw the same without furnishing any security. No costs. Whereas,

M.A.C.M.A. No.1437 of 2014 filed by the respondents-Corporation is dismissed. There shall be no order as to costs.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

JUSTICE M.G. PRIYADARSINI

16.09.2022

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