

THE HONOURABLE JUSTICE M.G. PRIYADARSINI

M.A.C.M.A.No.333 of 2017

JUDGMENT:

Dissatisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal-cum-IV Additional District Judge (II Fast Track Court), Nalgonda, in O.P. No.287 of 2009, dated 25.10.2016, the present appeal is filed by the claimant seeking enhancement of compensation granted by the Tribunal.

2. For the sake of convenience, the parties hereinafter will be referred to as arrayed before the Tribunal.

3. Appellant is the petitioner in the main O.P. According to the petitioner, on 28.03.2008 she was proceeding to Peddapur village along with her villagers to attend marriage at Peddapur in Cruiser bearing No.AP 22 V 717. At about 13.00 hours, when their vehicle reached Narayanapur bus stop, the driver of another Cruiser bearing No.AP 36 V 9431 came in rash and negligent manner with high speed from the opposite direction and dashed their vehicle, due to which, she sustained grievous injuries and fractures. Immediately, she was shifted to Community Health Center,

Kalwakurthy, Mahabubnagar District and from there she was shifted to Osmania General Hospital, Hyderabad, for better treatment. According to the petitioner, she was hale and healthy and earning Rs.3,000/- per month as a labourer. Due to the injuries sustained by her, she lost her earnings. Thus, the petitioner is claiming compensation of Rs.1,00,000/- for the injuries sustained by her against the respondents 1 and 2 jointly and severally.

4. Respondent No.1 remained ex parte. Respondent No.2 filed counter disputing the manner of accident, nature of injuries sustained by the petitioner, age, avocation and income of the petitioner and further contended that the claim is exorbitant and sought for dismissal of the claim petition.

5. Based on the above pleadings, the Tribunal framed the following issues:

1. *Whether the claimant sustained injuries in a motor accident due to the rash and negligent driving of driver of cruiser bearing No.AP 36 V 9431?*
2. *Whether the claimant is entitled to any compensation, if so, to what amount and from whom?*
3. *To what relief?*

6. In order to prove the issues, PW.1 was examined and Exs.A1 to A6 got marked on behalf of the petitioner. On behalf of respondents, RWs.1 and 2 were examined and Exs.B1 to 4 got marked.

7. On considering the oral and documentary evidence available on record, the Tribunal has awarded an amount of Rs.25,500/- towards compensation to the claimant along with proportionate costs and interest @ 7.5% per annum from the date of petition till realization against the respondents jointly and severally.

8. Heard the learned counsel for the appellant-claimant and the learned Standing Counsel for the respondent No.2- Corporation. Perused the material available on record.

9. The learned Counsel for the claimant contended that the tribunal failed to appreciate that there is no negligence on the part of the vehicle in which the appellant was traveling and erroneously held that there is contributory negligence on both vehicles and that

though the petitioner sustained grievous injuries, the tribunal awarded very meager amount.

10. The learned Standing Counsel for the respondent No.2- Insurance Company contended that the Tribunal has rightly held that there is contributory negligence on both the vehicles involved in the accident and awarded just and reasonable compensation and the same needs no interference by this Court.

11. With regard to the manner of accident, the evidence of PW-1 shows that on 28.03.2008 while she was going to Peddapur village along with her villagers to attend the marriage in Cruiser bearing No. AP.22.V.7171 and on the way when they reached the bus stage of Narayanapur at about 1-00 p.m., another Cruiser bearing no. AP.36.V.9431 came from the opposite direction in a rash and negligent manner at high speed, due to which both vehicles collided with each other and sustained grievous injuries. Further Ex.A1 Certified copy of First Information Report shows that a case has been registered against the driver of cruiser bearing No. AP.36.V.9431 by the Police, Veldanda P.S. in Crime No.20 of 2008 for the offences punishable under Sections 304-A, 337 and

337 of Indian Penal Code. Ex.A6 Certified copy of charge sheet shows that police after thorough investigation filed charge sheet against the driver of the cruiser bearing No. AP.36.V.9431. Thus, the tribunal erred in holding that there is contributory negligence on both vehicles. Therefore, it is concluded that the accident occurred due to the rash and negligent driving of the cruiser bearing No. AP.36.V.9431 of respondent No.1.

12. In so far as the quantum of compensation is concerned, the evidence of PW-1 shows that due to the said accident, she sustained four fractures i.e., i) fracture of ribs, ii) grievous injury on left leg, iii) grievous injury on frontal region (head injury) and iv) laceration of 10 stitches on forehead and other multiple injuries all over the body. Immediately after the accident, she was shifted to Community Health Center, Kalwakurthy, for treatment and after first aid, she was shifted to osmania General Hospital, Hyderabad, for better treatment and later she also took treatment in V.K. Hospital, Deverakonda and she spent more than Rs.27,750/- towards her treatment and medical expenses. Ex.A2 certified copy of wound certificate shows that the petitioner has sustained one grievous injury and two simple injuries. Considering the nature of

injuries sustained by the petitioner, the tribunal awarded an amount of Rs.15,000/- for one grievous injury and an amount of Rs.4,000/- for two simple injuries @ Rs.2,000/-, which are very less and as such, the same is enhanced to **Rs.25,000/-** for one grievous injury and **Rs.10,000/-** for two simple injuries @ Rs.5,000/- for each simple injury and **Rs.25,000/-** towards pain and sufferance. PW-1 stated that she spent an amount of Rs.27,750/- towards her treatment, for which the tribunal awarded an amount of Rs.20,000/- towards medicines, treatment and investigation charges, which is very less and as such, the same is enhanced to **Rs.27,750/-**. Further the petitioner is also awarded an amount of **Rs.20,000/-** is granted towards transport charges, extra nourishment and attendant charges. According to the petitioner, she is a labourer and was earning Rs.3,000/- per month. Due to the injuries sustained by her, she might not have attended to her work for some period. Therefore, the tribunal awarded an amount of Rs.6,000/- towards loss of earnings, which is very less and as such, the same is enhanced to **Rs.10,000/-**. Thus, in all the claimant is entitled to **Rs.1,17,750/-**.

13. With regard to the liability, admittedly, the driver of the cruiser bearing No. AP.36.V.9431 is having driving license, of course non-transport. The question as to whether the driver of the vehicle in question holding licence to drive non-transport vehicle was authorised to drive transport vehicle, is no longer res integra in view of the judgment in the case of ***Mukund Dewangan vs. Oriental Insurance Company Limited and others***¹, wherein the Apex Court held that “*the mere fact that the driver who possessed a licence to drive the light motor vehicle did not possess a licence to drive heavy transport vehicle by itself would not be sufficient to hold that the insurance company would be absolved of its liability to pay compensation*”

12. In view of the principles laid down by the Apex Court in the judgment referred to above, the contention of the learned counsel appearing for the Insurance Company that the Insurance Company is not liable to pay the compensation cannot be accepted and that no error has been committed by the Tribunal in fastening the liability on the insurance company to pay compensation.

¹ (2016) 4 SCC 298

14. Accordingly, the M.A.C.M.A. is allowed by enhancing the compensation awarded by the Tribunal from Rs.25,500/- to **Rs.1,17,750/-**. The enhanced amount shall carry interest at 6% p.a. from the date of petition till the date of realization, payable by respondent Nos. 1 and 2 jointly and severally. Time to deposit the amount is one month from the date of receipt of a copy of this order. The claimant shall pay the deficit court fee. On such deposit of court fee only, the claimant is entitled to withdraw the amount without furnishing any security. However, the claimant shall pay the deficit court fee. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

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