

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**M.A.C.M.A.No.400 OF 2016****JUDGMENT:**

This MACMA is filed under Section 173 of the Motor Vehicles Act, 1988 by the claimant seeking enhancement of compensation aggrieved by the order and decree dt.10.12.2014 passed in M.V.O.P.No.826 of 2010 by the Motor Accident Claims Tribunal-cum-Additional District Judge, Nizamabad (for short "the Tribunal").

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

3. Brief facts of the case are that on 07.04.2009, while the petitioner was travelling in APSRTC Bus from Janakampet Village to Nizamabad and when it reached near Nehrunagar Village at 0920 hours, another APSRTC Bus bearing No.AP-11-Z-5536 came in opposite direction, being driven by its driver in a rash and negligent manner and at high speed, dashed against the Bus in which the petitioner was travelling. She sustained a fracture of Nasal Bone (12 sutures), a comminuted fracture that

depressed both bones of nasal, grievous cut injury over the face, injuries on mouth, teeth loosening and also sustained injuries over various parts of her body. She was shifted to Amrutha Laxmi Multi Specialty Hospital, Nizamabad and was treated as an inpatient. Due to the accident, she was unable to do work and could not walk properly as she sustained a permanent partial disability. At the time of the accident, the petitioner was aged 28 years and was working as Anganwadi Teacher and also Tailoring work with a monthly income of Rs.10,000/-. Therefore, she laid the claim against the respondents seeking compensation of Rs.1,00,000/-

4. Respondents filed a counter denying the petition allegations.

5. The petitioner, to prove her case, got examined PWs.1 to 5 and got marked Exs.A1 to A15. No oral or documentary evidence was adduced on behalf of the respondents. Ex.X-1/Case Sheet was marked by PW-4.

6. After considering the oral and documentary evidence available on record, the Tribunal allowed the O.P. in part awarding a sum of Rs.97,000/- towards compensation with

interest at 7.5% per annum. For enhancement of the same, the petitioner filed the present appeal.

7. Heard both sides and perused the record.

8. Learned Counsel for the petitioner contended that the Tribunal ought to have considered that the injuries sustained by the petitioner were grievous and contended that the compensation awarded under various heads deserves to be enhanced. He further contended that the Tribunal erred in fixing the salary of the petitioner @ Rs.5,000/- per month instead of Rs.15,000/- and contended that even on the lower side, the salary of the petitioner ought to have been taken @ Rs.10,000/- p.m. The compensation awarded under other all the heads were on the lower side and prayed to award just compensation.

9. Per contra, learned Counsel appearing for the respondents would contend that the Tribunal ought to have taken the notional income of the petitioner @ Rs.4,500/- p.m and the Tribunal was considerate enough to fix it @ Rs.5,000/-. He further contended that there is no irregularity in the

assessment of compensation under various heads and prayed to dismiss the appeal.

10. The Tribunal has cautiously adjudicated the case of the petitioner with respect to the injuries and dental surgery of the petitioner as it is seen from the record that the respondents strenuously resisted the claim of the petitioner. On considering Exs.A2 – A9, Exs.A11 – A15 and the oral evidence of the witnesses, the Tribunal found that the petitioner indeed suffered various injuries including fractures which were grievous in nature and awarded compensation under various heads, which is as follows:

Head	Amount awarded by Tribunal
Fractures, Pain and suffering	Rs.40,000/-
Medical treatment and medicines	Rs.26,500/-
Future surgery	Rs.20,000/-
Loss of earnings	Rs. 5,000/-
Extra Nourishment	Rs. 4,000/-
Transportation	Rs. 2,000/-
Total	Rs.97,500/-

11. The petitioner contends that the injuries sustained by her are grievous in nature and she underwent tremendous pain and

lost her income for a considerable amount of time. It is to be observed that there is no material placed before the Courts with regard to the proof of income of the petitioner except that of her self-serving testimony. In the absence of the same, the Tribunal, without ascertaining/fixing even the notional income of the petitioner, went on to simply award Rs.5,000/- towards loss of earnings with an observation *“taking into consideration the injury sustained by her which laid her to disclaim her earning a certain amount can be granted under the head of loss of earning during the period of treatment.”*

12. The above observation made by the Tribunal needs to be examined. There is no clarity whether the Tribunal felt that the income of the petitioner could be fixed at Rs.5,000/- p.m and the loss of earnings could have been for the period of one month, or otherwise. As such, this Court is of the opinion to consider Rs.5,000/- as the monthly income of the petitioner. The petitioner was under treatment in the Hospital from 07.04.2009 to 17.04.2009. As the injuries to the petitioner were grievous in nature, it can be safely concluded that she might have taken at least (03) months to recover in order to continue her work. Hence, this Court is inclined to award Rs.15,000/- towards loss

of earnings. Further, the Tribunal clubbed the heads of compensation for sustaining fracture injuries and pain and suffering and granted Rs.40,000/-. This Court is of the view that the same deserves to be separated and enhanced. As such, the petitioner is entitled to enhance the compensation as under:

Head	Amount awarded by this Court
Fracture injuries	Rs.50,000/-
Pain and suffering	Rs.20,000/-
Medical treatment and medicines	Rs.26,500/-
Future surgery	Rs.20,000/-
Loss of earnings	Rs.15,000/-
Extra Nourishment	Rs. 5,000/-
Transportation	Rs. 5,000/-
Total	Rs.1,41,500/-

13. Accordingly, the M.A.C.M.A. is partly allowed, enhancing the compensation amount awarded by the Tribunal from Rs.97,500/- (Wrongly calculated as Rs.97,000/-) **to Rs.1,41,500/-** (Rupees One Lakh, Forty One Thousand and Five Hundred only) with interest of 7.5% from the date of petition till the date of realization. The respondents shall deposit the said compensation amount together with interest and costs after

giving due credit to the amount already deposited, if any, within a period of two months from the date of receipt of a copy of this judgment. However, the petitioner is directed to pay the deficit court fee within a period of one month from the date of receipt of a copy of this judgment. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

NAMAVARAPU RAJESHWAR RAO, J

21st day of February, 2023
BDR