

***THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

+ M.A.C.M.A.Nos.1375 OF 2011 and 4342 OF 2012

% 16—12—2023

Ch.Preethi

...Appellant/Petitioner

vs.

\$ Andhra Pradesh State Road Corporation and another

... Respondents/Respondents

!Counsel for the Appellant : Sri T.Viswarupachari

^Counsel for Respondents : Sri K.Srinivas Rao

<Gist :

>Head Note :

? Cases referred

1. 2023 ACJ 1653
2. 2022 SC Online 1701
3. (2017) 16 SCC 680
4. 2009 ACJ 1298
5. (2015) 9 Supreme Court Cases 273
6. MANU/SC/0480/2013

IN THE HIGH COURT FOR THE STATE OF TELANGANA

HYDERABAD

* * * *

M.A.C.M.A.Nos.1375 OF 2011 and 4342 OF 2012

Between:

Ch.Preethi

... Appellant/Petitioner

and

Andhra Pradesh State Road Corporation and another

... Respondents

JUDGMENT PRONOUNCED ON: 16.12.2023

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? :
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? :
3. Whether His Lordship wishes to
see the fair copy of the Judgment? :

NAMAVARAPU RAJESHWAR RAO, J

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

M.A.C.M.A.Nos.1375 of 2011 and 4342 of 2012**COMMON JUDGMENT:**

These two appeals are being disposed of by this common judgment since M.A.C.M.A.No.4342 of 2012 filed by the A.P.S.R.T.C. disputing the quantum of compensation and

fixing of 75% liability, and M.A.C.M.A.No.1375 of 2011 filed by the petitioner/claimant seeking enhancement of the compensation and disputing the fixing of 25% liability are directed against the very same order and decree dated 10.08.2010 passed in O.P.No.1797 of 2008 on the file of the Motor Accidents Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad (for short 'the Tribunal).

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

3. The brief facts of the case are as follows:

On 27.05.2008 at about 10.00 a.m., at Autonagar, Hyderabad, while the petitioner along with her friend was proceeding on a motorcycle, at that time, one RTC bus bearing No.AP-11-Z-1589, driven by its driver in a rash and negligent manner, dashed against the motorcycle. As a result, the petitioner fell on the road and sustained grievous injuries. The petitioner was hospitalized and she spent a huge amount towards medical expenses. Therefore, the petitioner filed the O.P. seeking compensation of Rs.20,00,000/-.

4. The respondents filed a counter denying the allegations made in the claim petition and contended that the accident occurred due to rash and negligent driving of the

rider of the motorcycle and there was no negligence on the part of the driver of the offending vehicle, and as such, the respondents are not liable to pay the compensation.

5. On behalf of the petitioner, P.Ws.1 to 6 were examined, and Exs.A1 to A.16 and Ex.X1 were marked. On behalf of the respondents, RW.1 was examined, and no documents were marked.

6. After hearing both sides and after considering the material available on record, the Tribunal assessed the compensation at Rs.10,00,000/- and after deducting 25% of the amount towards the contributory negligence on the part of the rider of the motorcycle, awarded an amount of Rs.7,50,000/- to the petitioner while fixing the liability of 75% on the driver of the offending vehicle and directed both the respondents to pay the said amount with interest at 7.5% per annum from the date of petition till the date of realization. Challenging the said award, the APSRTC has filed M.A.C.M.A.No.4342 of 2012, and the petitioner has filed M.A.C.M.A.No.1375 of 2011.

7. Heard both sides and perused the record.

8. Learned counsel appearing for the petitioner contended that the Tribunal ought to have considered the

future loss of earning capacity based on the permanent disability, which was fixed at 60%. The petitioner is unmarried and on account of skin grafting, her face and other parts of the body were disfigured. The accident occurred due to rash and negligent driving of the driver of the offending vehicle alone and therefore, the Tribunal ought not to have fixed the liability at 25% on the part of the petitioner. The Tribunal ought to have awarded just compensation under various heads as claimed by the petitioner. The amount awarded by the Tribunal is very meager and unjustifiable.

9. Learned counsel for the respondents contended that the accident occurred due to rash and negligent driving of the rider of the motorcycle and there was no negligence on the part of the driver of the offending vehicle and that the Tribunal erred in fixing 75% contributory negligence on the part of the driver of the RTC bus. He further contended that the Tribunal erred in awarding a sum of Rs.4,50,000/- for three grievous injuries, Rs.3,50,000/- towards medical expenses and Rs.2,00,000/- towards loss of earnings.

10. As seen from the evidence of PW.1, she categorically deposed that she sustained injuries, including fractures. PW.2 Medical Officer deposed that PW.1 sustained (1) crush injury to the right hand and forearm with loss of

dorsal tissue, exposive cut tendons, wrist joint and ulna, crushed distal ulna, deep abrasions extended upto mid-arm (2) fracture pelvis (3) deep abrasions involving right loin, hip and right thigh with de-gloving from loin to right knee joint. He further deposed that she underwent surgeries viz., 1) wound toilet and debridement of crush injury on right hand and forearm on 27.5.2008 (2) wound toilet and placement of suction drains to de-gloving injuries on 27.5.2008 and (3) opposite groin flap cover to lower right forearm and skin grafting to upper forearm on 07.06.2008.

11. The evidence of PW.3-Medical Officer also concurred with the deposition of PW.2 and confirmed the nature of injuries and surgeries that PW.1 underwent. Keeping in view the gravity of fracture injuries and as the petitioner underwent surgeries multiple times, the Tribunal granted an amount of Rs.1,50,000/- each for grievous injury i.e., Rs.4,50,000/- for three grievous injuries besides pain and suffering. In the light of Exs.A-7 to A-12, the Tribunal granted an amount of Rs.3,50,000/- towards medical expenses.

12. The petitioner produced Ex.X-1 Disability Certificate showing the disability at 60%. PW.3 deposed that on account of fracture of pelvis, the petitioner will have pain

on walking and will not be able to have a normal delivery and she had difficulty in urinating normally for about six months and due to the said injuries, the petitioner has a disability of about 60%, which is partial and permanent. Accordingly, the Tribunal granted an amount of Rs.2,00,000/- towards loss of earnings. Thus, in all, the Tribunal assessed the compensation at Rs.10,00,000/-. The culpability for the accident was fixed at 75% on the part of the driver of the offending vehicle and 25% on the part of the rider of the motorcycle. Accordingly, the Tribunal awarded an amount of Rs.7,50,000/- to the petitioner.

13. With regard to the income, learned counsel for the petitioner contended that the Tribunal ought to have fixed the petitioner income at Rs.25,000/- per month as she had completed B.Tech (Computer Science and Engineering) in first class. In support of his contention, the learned counsel appearing for the petitioner relied upon the judgment of the Hon'ble Apex Court in **KANDASAMI AND OTHERS Vs. LINDA BRIYAL AND ANOTHER¹**.

“4. Be that as it may, even in that circumstance, when it is established that the deceased was an Engineering graduate and the employment opportunities during the year 2008 is kept in view, even on a conservative estimate, the sum of Rs. 25,000 to be reckoned would be justified. In that view, in the instant case we would reckon the income of the deceased at Rs. 25,000

¹ 2023 ACJ 1653

per month. Towards the same, 40 per cent is to be awarded as future prospects which would be in a sum of Rs. 10,000. Hence, the total income would be Rs. 35,000 per month of which 50 per cent is to be deducted, as the deceased was a bachelor. The amount of Rs. 17,500 if taken on an annual basis and the appropriate multiplier of '17' is applied, the amount would be in a sum of Rs. 35,70,000. The sum of Rs. 70,000 is added towards 'conventional heads'. Hence, the total compensation would work out to Rs. 36,40,000. The High Court has awarded a sum of Rs. 10,97,000. The appellants would therefore be entitled to the enhanced compensation of Rs. 25,43,000 with interest at 7.5% per annum from the date of the petition before the MACT till the date of payment."

14. With regard to the disability, learned counsel for the petitioner relied upon the judgment of the Hon'ble Apex Court in **MOHD.SABEER ALIAS SHABIR HUSSAIN Vs. REGIONAL MANAGER, U.P. STATE ROAD TRANSPORT CORPORATION.**²

".....

13. *The Appellant has suffered an amputation of the lower right limb, a fracture in the medial wall of the bilateral orbit, crush injury right leg, fracture tibia right leg, exposed vessels and other injuries. As per the disability certificate, the Appellant has suffered 70% 1 Civil Appeal No. 8420 of 2018 (Dated : August 21, 2022) 4 disability, however the High Court has held that the Appellant has only suffered 35% loss in future earnings due to the disability.*

14. *To assess the quantum of compensation to be awarded, this Court has to assess whether the permanent disability caused has any adverse effect on the earning capacity of the Appellant, as held by this Court in the case of Sandeep Khanuja Vs. Atul Dande and Anr.² . The relevant paragraph of the judgment is quoted hereunder :- "The crucial factor which has to be taken into consideration thus is to assess whether the permanent*

² 2022 SC online 1701

disability has any adverse effect on the earning capacity of the injured. We feel that the conclusion of the MACT on the application of aforesaid test is erroneous. A very myopic view is taken by the MACT in taking the view that 70% permanent disability suffered by the appellant would not impact the earning capacity of the appellant. The MACT thought that since the appellant is a chartered accountant he is supposed to do sitting work and therefore his working capacity is not impaired..... A person who is engaged and cannot freely move to attend to his duties may not be able to match the earning in comparison with the one who is healthy and bodily able. Movements of the appellant have been restricted to a large extent and that too at a young age.

16. *The Appellant herein has suffered permanent disability of 70% and has an amputated right lower limb amongst other injuries. The High Court has wrongly taken the view that the Appellant has only suffered 35% functional disability. The Appellant is not a salaried person but is self-employed who manages his business. For the Appellant to be able to augment his income, he is most definitely required to move around. The Appellant can also not drive on his own, which hinders his mobility further. This proves that the functional disability of the Appellant will severely impact his earning capacity, and the 35% 2 (2017) 3 SCC 351 3 (2011) 1 SCC 343 5 functional disability calculated by the High Court is incorrect in the facts and circumstances of the case and in our view the loss of future earning capacity must be calculated at 60%.”*

15. The above judgments are with regard to the functional disability and its assessment. But, in the present case, the disability is fixed based on the Doctor Certificate as the petitioner suffered permanent partial disability. Therefore, the above judgments are not applicable to the case on hand.

16. In the instant case, this Court is inclined to accept the Disability Certificate in view of the condition of the petitioner and fix the disability at 60%, as the Courts have no power either to increase or to decrease the disability and moreover, the petitioner has produced Ex.X1-Disability Certificate. The Tribunal did not add future prospects on the income of the petitioner, as per the decision of the Hon'ble Supreme Court in **National Insurance Company Ltd. V. Pranay Sethi**³, as such, 40% of future prospects on the income is added, as the petitioner was aged 19 years at the time of the accident. The monthly income comes to Rs.35,000/- (Rs.25,000/- + 40%). As per **Sarla Verma V. Delhi Transport Corporation**⁴ the correct multiplier applicable for the age group 15-25 years is '18'. Thus, the petitioner is entitled to a sum of Rs. Rs.45,36,000/- (Rs.35,000/- x 12 x 18 x 60%) towards disability. As the petitioner stated that she took bed rest for six months, this Court is inclined to award a sum of Rs.1,50,000/- (Rs.25,000/- X 6) towards loss of earnings.

17. With regard to the grievous injuries, the Tribunal without going into the veracity of the injuries, erroneously awarded an amount of Rs.1,50,000/- for each grievous injury

³ (2017) 16 SCC 680.

⁴ 2009 ACJ 1298.

i.e., Rs.4,50,000/- for three grievous injuries, besides pain and suffering, which is on the higher side and the same has to be reduced. Accordingly, this Court is inclined to grant an amount of Rs.20,000/- each for grievous injury i.e., Rs.60,000/- for three grievous injuries. Further, since the petitioner has suffered a lot due to the injuries sustained by her, this Court is inclined to grant an amount of Rs.1,90,000/- towards pain and suffering. The Tribunal granted an amount of Rs.3,50,000/- towards medical expenses, which needs no interference by this Court. The Tribunal did not grant any amount towards transportation, extra nourishment, attendant charges and loss of amenities. This Court is inclined to award an amount of Rs.10,000/- towards transportation, Rs.25,000/- towards extra nourishment and Rs.1,50,000/- towards loss of amenities. Since the petitioner suffered for six months, she might have taken the assistance of attendant to attend her regular works. So, this Court is inclined to award an amount of Rs.50,000/- towards attendant charges. Therefore, the total comes to Rs.55,21,000/-.

18. With regard to the negligence, after hearing the matter, based on evidence, the Tribunal came to a conclusion that there is negligence on both sides and accordingly, fixed

75% liability on the part of the driver of the offending vehicle and 25% liability on the part of the rider of the motorcycle.

19. With regard to contributory negligence, learned counsel appearing for the petitioner relied upon the judgment of the Hon'ble Apex Court in ***KHENYEI Vs. NEW INDIA ASSURANCE COMPANY LIMITED AND OTHERS***⁵, wherein the Hon'ble Apex Court held as follows :-

“26. On the same principle, in the case of joint tort-feasors where the liability is joint and several, it is the choice of the claimant to claim damages from the owner and driver and insurer of both the vehicles or any one of them. If claim is made against one of them, entire amount of compensation on account of injury or death can be imposed against the owner, driver and insurer of that vehicle as their liability is joint and several and the claimant can recover the amount from any one of them. There can not be apportionment of claim of each tort-feasors in the absence of proper and cogent evidence on record and it is not necessary to apportion the claim.”

20. In the instant case, though the rider of the motorcycle did not receive any injuries in the accident, he did attempt to overtake the bus from the left side at a high speed and upon seeing a lorry coming in the opposite direction on wrong side of the road, he attempted to apply brake suddenly. Resultantly, the rider of the motorcycle and the petitioner fell on the road and the petitioner came under the rear side of the wheel of the bus. Had the rider of the motorcycle not over

⁵ (2015) 9 Supreme Court Cases 273

taken the bus from the left side at a high speed, the accident would not have occurred. The same was concurred by the evidence of RW.1, who deposed that the petitioner fell down on the right side of motorcycle and came under the rear left side wheel of our bus. He observed the same in the vision mirror, and immediately he stopped the bus. The rider of the motorcycle escaped from the spot. The petitioner received injuries and was shifted to the hospital.

21. As per the evidence of RW.1, there was a contributory negligence on the part of the rider of the motorcycle. The Tribunal fixed the contributory negligence at 25% on the part of the petitioner and 75% on the respondents. Therefore, the Tribunal rightly appreciated the evidence with regard to the contributory negligence and fixed 25% on the petitioner and 75% on the respondents, which needs no interference by this Court. Considering the contributory negligence on the part of the petitioner @ 25%, the petitioner is entitled to an amount of Rs.41,40,750/- (Rs.55,21,000/- (-) Rs.13,80,250/-)

22. Though the claimed amount is Rs.20,00,000/-, invoking the principle of just compensation, and in view of the law laid down by the Hon'ble Supreme Court in **Rajesh vs.**

Rajbir Singh⁶, and in a catena of decisions, this Court is empowered to grant compensation beyond the claimed amount.

23. Thus, the petitioner is entitled to the enhanced compensation of **Rs.41,40,750/-** as against the awarded amount of Rs.7,50,000/-.

24. Accordingly, the M.A.C.M.A.No.1375 of 2011 filed by the petitioner is allowed enhancing the compensation amount from Rs.7,50,000/- **to Rs.41,40,750/-** (Rupees forty one lakh, forty thousand, seven hundred and fifty only) with costs and interest @ 7.5% p.a on the enhanced amount from the date of petition till the date of realisation. The respondents are directed to deposit the awarded amount along with interest and costs, after deducting the amount if any already deposited, within two months from the date of receipt of a copy of this judgment. On such deposit, the petitioner is permitted to withdraw the same. However, the petitioner is directed to pay the deficit court fee within a period of two months from receipt of a copy of this judgment.

25. **M.A.C.M.A.No.4342 of 2012**

In view of the above findings in M.A.C.M.A.No.1375 of 2011, which is decided in favour of the

⁶ MANU/SC/0480/2013

petitioner, this M.A.C.M.A.No.4342 of 2012 filed by the RTC
is hereby dismissed.

Miscellaneous petitions, if any are pending, shall
stand closed.

NAMAVARAPU RAJESHWAR RAO, J

16th day of December, 2023
L.R.Copy to be marked
(B/o)
Prv