

(2023) 03 TEL CK 0088

In the Telangana High Court

Case No : Motor Accident Civil Miscellaneous Appeal No. 1374 Of 2015, Cross Objections No. 44 Of 2022

Apsrtc Another

APPELLANT

Vs

Maddineni Laxmi Gowthami

RESPONDENT

Date of Decision : 29-03-2023

Acts Referred:

Citation : (2023) 03 TEL CK 0088

Hon'ble Judges : Namavarapu Rajeshwar Rao, J

Bench : Single Bench

Final Decision : Dismissed/Partly Allowed

Judgement

1. This M.A.C.M.A and cross objections are being disposed of by way of this common judgment as both these matters are directed against the award dated 10.04.2014, passed in M.V.O.P.No.924 of 2011 by the Chairman, Motor Accident Claims Tribunal-Cum-Special Sessions Judge for Trial of Cases under SCs & STs (POA) Act, 1989-Cum-VIII Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar (for short "the Tribunal).

2. In M.A.C.M.A No.1374 of 2015 the Appellant/RTC had challenged the award with regard to its legality and prayed to set aside the same, and the cross objections No.44 of 2022, the respondent/petitioner is questioning the quantum and prayed to enhance the same.

3. The parties hereinafter will be referred to as they are arrayed before the Tribunal for the sake of convenience.

4. The brief facts of the case are as follows. That on 20.08.2011, the petitioner along with her mother Smt M. Vijaya and her aunt Smt M. Rama Lakshmi intended to proceed from Moosapet to S.R.Nagar. When they were waiting at Moosapet Bus Stop, one APSRTC bus bearing No.AP-11-Z-6551 which was coming from the Kukatpally side and the bus was stopped at the Moosapet Bus stop the petitioner boarded the bus and enquired the bus conductor whether the

bus was going to S.R.Nagar, the conductor informed her that the bus was not bound to S.R.Nagar and asked her to get down from the bus and on the advice of the conductor, she tried to get down from the bus and at the same time, driver of the bus suddenly moved the bus and started with high speed though the conductor did not give any signal to the driver to proceed the bus. As a result, she fell down from the bus and the left side of the rear wheel ran over her right leg, due to which, she sustained a crush injury to her right ankle. Immediately, after the accident, she was shifted to Prime Hospital and underwent surgery. At the time of the accident, she got admission in NOVA Business School for MBA which is Post Graduation Diploma in Management. She deposited a sum of Rs.83,000/- towards the fee for the first year and Rs.17,000/- for transportation and paid Rs.4,00,000/- towards the donation. As a result of her injuries, she claimed Rs.10,00,000/-.

5. Respondent No.2 was set ex-parte and respondent No.1 filed counter denying the allegations made in the petition.

6. In proof of the case, the claimant was examined as PWs.1 to 5 and got marked Exs.A1 to A36. On behalf of respondent No.1 neither oral nor documentary evidence was adduced.

7. On appreciating the evidence on record, the Tribunal allowed the O.P. by granting compensation of Rs.20,00,000/- as against the claim of Rs.10,00,000/- with interest @ 6% p.a.

8. In order to maintain the cross-objections, the petitioner filed I.A. No.1 of 2022 for condoning the delay of 125 days in filing the cross-objections. The reasons assigned in the accompanying affidavit are satisfactory, hence the same is allowed. Apart from I.A. No.1 of 2022, the petitioner also filed I.A. No.2 of 2022 for amendment of claim from Rs.20,00,000/- to Rs.30,00,000/-. Hence, the present appeal and cross- objections.

9. Learned counsel for respondents/RTC had contended that the Tribunal grossly erred in awarding the compensation more than that was claimed in the absence of income proof, and no independent witnesses were examined despite the petitioner pleaded that her mother and aunt were along with her and this itself proves that there was no rash and negligent act of the driver of the bus. He further contended that the Tribunal failed to accept the grounds of respondents that the petitioner did not produce any evidence with regard to payment of Rs.5,00,000/- towards her education; that there is a delay of 5 days in complaining with the police and the petitioner did not suffer any disability as the injury was only crush injury. Accordingly, prayed to allow the appeal.

10. On the other hand, learned counsel for the petitioner contended that the Tribunal ought to have considered the loss of earnings @ 100% instead of 40% and further contended that the Tribunal ought to have granted compensation under the heads of loss of amenities and loss of marital prospects. He also contended that future prospects @ 40% ought to have been added to the income

of the petitioner. Accordingly, prayed to dismiss the appeal and allow the cross objections.

11. A perusal of the record reveals that the petitioner adduced evidence by examining herself as PW.1 and marked Ex.A1/C.C. of FIR and Ex.A2/charge sheet in order to prove the involvement of bus of the respondent in the accident resulting in injuries to her. The respondents/RTC's contention that the accident was not proved as the petitioner failed to examine her mother and aunt, miserably fails as no contrary evidence was adduced on their behalf. As such, the evidence adduced by the petitioner suffices this aspect in her favour.

12. The further contention of the respondents that the Tribunal ought to have considered the monthly income of the petitioner on the lower side in the absence of income proof is, to be analysed. The petitioner is a graduate and claimed that she got admission into MBA course. The Tribunal considered the monthly income of the petitioner at Rs.12,000/- relying on the decision of this Court in Remulamma Vs. Venkatesh Bus Union & Anr 2009 (3) L.S 173 (D.B).

In justification of the above exercise done by Tribunal, learned Counsel for the petitioner relied upon the following decisions:

i. Meena Pawaia Vs. Ashraf Ali – Hon'ble Supreme Court of India – 2022(1) ALD 54 (SC).

ii. N. Surender Rao Vs. B. Swamy – High Court of Andhra Pradesh - 2014 ACJ 2613.

13. The first decision pertains to the case of a person studying in 3rd year of B.E/ civil engineering who died in a motor vehicle accident. The Hon'ble Supreme Court determined the monthly income of the deceased at Rs.10,000/- p.m. for the calculation as loss of income of the deceased.

The second decision pertains to the case of an engineering graduate who died in a motor vehicle accident. This Court sustained the finding of the Tribunal that the engineering graduate's monthly income could be taken at Rs.12,000/- p.m.

14. In the present case, the petitioner suffered a crush injury to her ankle and as observed from the record, she filed proofs of the same, including Ex.A32/ Academic Education Certificate, in proof of her graduation. Thus, applying the above decisions and the decision relied by the Tribunal to the present case, the income of the petitioner can be safely concluded as the same i.e Rs.12,000/- p.m.

15. As the income of the petitioner is taken as Rs.12,000/- per month, 40% future prospects is to be added in view of the decision in National Insurance Company Ltd. Vs. Pranay Sethi (2017) 16 SCC 680. as the petitioner was aged 21 years at the time of the accident. Thus, the monthly income of the petitioner is Rs.12,000/- + 40% = Rs.16,800/-. Hence, the annual income comes to Rs.2,01,600/- (Rs.16,800/- x 12) and for the purpose of calculation of loss of future earnings, the same is to be multiplied with '18' as per Sarla Varma V. Delhi

Transport Corporation (2009) 6 SCC 121 and 40% of such amount is to be considered in respect of disability i.e. $\text{Rs.}2,01,600 \times 18 \times 40\% = \text{Rs.}14,51,520/-$. Learned counsel for petitioner contended that the disability should be taken at 100% for the purpose of loss of future earnings but the same is rejected as no cogent material or oral evidence leans in favour of his contention. At the same time, the ground of the respondents that the disability of the petitioner as alleged is not permanent in nature is also rejected as the respondents neither adduced contrary evidence nor elicited anything in the cross-examination.

16. The petitioner was not awarded compensation under the head loss of amenities and loss of future marriage prospects. This Court is inclined to award Rs.50,000/- and Rs.50,000/- respectively under the above heads. Compensation awarded by the Tribunal under the remaining heads is justified.

17. In all, the petitioner is entitled to Rs.25,14,720/- ($\text{Rs.}14,51,520/- + 50,000/- + 50,000/- + 5,000/- + 5,26,271/- + 2,00,000/- + 2,00,000/- + 31,929/-$). It is noticed that the Tribunal awarded interest on the compensation amount @ 6% p.a., but now the Courts are awarding interest @ 7.5% p.a. As such, the petitioner is entitled to interest @ 7.5% p.a.

18. Accordingly, the M.A.C.M.A. No.1374 of 2015 is dismissed while the Cross Objections No.44 of 2022 is allowed in part by enhancing the compensation amount awarded by the Tribunal from Rs.20,00,000/- to Rs.25,14,720/- (Rupees Twenty five lakh, fourteen thousand, seven hundred and twenty 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. Upon such deposit, the petitioner is permitted to withdraw the entire amount subject to payment of the deficit Court fee. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.