

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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CIVIL MISCELLANEOUS APPEAL No.3115 OF 2004

JUDGMENT:

Having got dissatisfied with the amount of Rs.78,970/- granted as compensation by the order dated 05.05.2004 in M.V.O.P. No.477 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Cuddapah (for short, 'the Tribunal') as against the claim of Rs.2,75,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the injuries sustained by the petitioner in a road accident, the instant appeal is preferred under Section 173 of the Act seeking enhancement of compensation.

2. The appellant herein is the petitioner, while respondent Nos.1 and 2 herein, who are the owner and insurer of the lorry bearing registration No.TN 01Q 9570, respectively, were respondent Nos.1 and 2, respectively, in the original petition.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The fact-situation occurring in the instant case is that on 09.05.2002, the petitioner along with his son started from their village Chinnamasupalli with his double bullock cart to go to Balisinganapalli village to get paddy rick and at about 5-30 a.m., when they reached Upparapalli cross road on Cuddapah-Kurnool national high way, a lorry bearing registration No.TN 01Q 9570 coming from Cuddapah side driven at high speed in a rash and negligent manner, dashed his bullock cart, though it was being taken on the left side of the road, due to which, he sustained grievous injuries all over his person including fractures to his right and left thighs and even other two persons have also received injuries and one bull was died and another bull was received injuries. Claiming that he was agricultural

coolie and earning Rs.60/- per day, the petitioner sought a sum of Rs.2,75,000/- towards compensation from respondent Nos.1 and 2, who are owner and insurer of the accident lorry.

5. Respondent No.1 remained *ex parte*. Respondent No.2 opposed the claim requiring the petitioner to prove the allegations levelled in the claim petition, however, stating that the claim is excessive, sought to dismiss the claim petition.

6. Basing on the said pleadings, the Tribunal framed the following issues about the responsibility for the accident:

1. Whether the petitioner sustained injuries in a Motor vehicle accident occurred on 9-5-2002 at 5-30 A.M. due to rash and negligent driving of lorry bearing No.TN-01-Q9570 by its driver belonging to Respondent No.1?
2. Whether the petitioner is entitled for compensation and if so to what amount and from whom ?
3. To what relief ?

7. During enquiry, the petitioner examined himself as P.W.1 besides examining Dr. G.Venkatasubbaiah as P.W.2 and marked Exs.A.1 to A.6 to prove his entitlement for the claim he laid; whereas, on behalf of the respondents, no witnesses were examined and no documents were filed.

8. The Tribunal, on issue No.1, appreciating the evidence on record, both, oral and documentary, let in by the parties, held that the accident had occurred only due to rash and negligent driving of the driver of the lorry, and, accordingly, recorded finding in favour of the petitioner.

9. On issue No.2, the Tribunal finding that the petitioner was treated for three months as an inpatient in Government Hospital,

Cuddapah and underwent surgical intervention, during which, a steel plate was inserted in his right thigh, fixed his income at Rs.15,000/- per annum. The Tribunal not agreeing with the evidence of P.W.2 in regard to the disability spoken to by P.W.2 at 55%, however, taken the percentage of disability at 40% and the age of the petitioner as 50 years on the date of accident, applied multiplier '11' and arrived at Rs.66,000/- towards 40% partial permanent disability equating it to future loss of earning capacity. The Tribunal has also granted Rs.4,000/- towards pain and suffering and medicines and Rs.8,970/- towards medical expenses, and, thus, granted a total sum of Rs.78,970/- towards compensation with interest at 9% per annum.

10. It is the aforesaid order which is under challenge in the instant appeal on the ground that the compensation granted by the Tribunal was very meager contending in the grounds that the Tribunal has not properly appreciated the evidence on record, more particularly, the evidence of the doctor examined as P.W.2, who has spoken about 55% disability having sustained by the petitioner and even not agreeing the daily wage of the petitioner at Rs.60/-, and, therefore, sought to grant the balance amount.

11. Heard Sri L.J.Veera Reddy, learned counsel for the appellant, and Sri Srinivasa Rao Vutla, learned Standing Counsel for respondent No.2. Though respondent No.1 served with notice, none appeared.

12. Learned counsel for the appellant-petitioner would submit that the Tribunal went wrong in fixing the daily wage at Rs.40/- instead of taking it at Rs.60/-, though the accident had occurred in the year 2002 and even reducing the percentage of disability from 55% to 40% without assigning any cogent reasons. He also would submit that the Tribunal has not awarded any amount towards extra nourishment, attendant and transport charges and temporary loss of earnings, and, therefore, sought to grant the amount as claimed.

13. On the other hand, learned Standing Counsel for respondent No.2-Insurance Company would submit that the amount

awarded by the Tribunal is just and reasonable and the petitioner is not entitled to any enhancement.

14. Perused the order and the material available on record including the evidence, both, oral and documentary, let in by the parties. The only question that arises for consideration is, whether the compensation determined by the Tribunal is just and reasonable.

15. As seen from the contents of Ex.A.2-certified copy of wound certificate, the petitioner sustained the following five injuries:

1. A lacerated injury on right eyebrow 5 x 3 cm muscle deep, bleeding.
2. Tenderness on right hip joint.
3. An abrasion on left knee 2 x 1 cm bright red.
4. Left thigh fracture upper end of femur.
5. Fracture of 3rd, 4th, 5th ribs right side.

16. Thus, admittedly, the petitioner sustained fracture of upper end of femur and fracture of 3rd, 4th and 5th ribs right side and was treated in Government Hospital, Kadapa. P.W.2 has issued Ex.A.4-disability certificate and P.W.1 approached him for evaluation and issuance of the disability certificate. The petitioner has not chosen to approach the concerned medical board constituted for the said purpose and no reasons are assigned by P.W.1 thereof, either in the claim petition or in the evidence. Therefore, the reason assigned by the Tribunal in fixing percentage of disability at 40% instead of 55% spoken by P.W.2 cannot be faulted.

17. Turning to the daily wage, the Tribunal has taken Rs.40/- though the petitioner claimed Rs.60/- as labourer. Since the accident had taken place in the year 2002, certainly, the amount of Rs.60/- per day claimed by the petitioner as daily wage cannot be discarded on any ground, and, therefore, it is taken as Rs.60/- per day, which works out to Rs.1,800/- per month and Rs.21,600/- per annum. The

petitioner was admittedly 50 years old, and, therefore, multiplier '13' is relevant as per the decision of the Apex Court in **Sarla Verma & others v. Delhi Transport Corporation and another**. When multiplier '13' is applied to the multiplicand Rs.21,600/-, future loss of earnings of the petitioner comes to Rs.2,80,800/- per annum. When 40% of the disability is taken into consideration, the future loss of earnings, on account of partial permanent disability, works out to Rs.1,12,320/- (Rs.2,80,800/- x 40%). The Tribunal has not granted any amount towards pain and suffering. When kept in view, the nature of injuries sustained by the petitioner and suffering due to fractures of three ribs right side and the fracture of right leg, he entitled to Rs.20,000/- towards pain and suffering. Besides the same, Rs.10,000/- is granted towards extra nourishment and Rs.6,000/- is granted towards attendant charges, as he was treated as an inpatient for three months, he would have incurred the same. Besides the said amounts, a sum of Rs.10,800/- is also granted to the petitioner towards temporary loss of earnings as he would not be able to move atleast for six months and also a sum of Rs.5,000/- is granted towards transport charges. The amount of Rs.8,970/- granted by the Tribunal towards medical expenses is not disturbed.

18. Thus, the petitioner is entitled to a total sum of Rs.1,73,090/- (Rupees one lakh seventy three thousand and ninety) as against Rs.78,970/- granted by the Tribunal, towards compensation and the same is accordingly granted. So far as the interest is concerned, the Tribunal granted 9% interest and the same is maintained on the amount granted by the Tribunal, but on the enhanced amount, interest at 7.5% per annum is granted from the date of petition till realization as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**.

19. Accordingly, the instant appeal is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

14. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand disposed of.

A. SHANKAR NARAYANA, J

24th November, 2015

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