

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A.No.509 OF 2006

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JUDGMENT:

Having got dissatisfied with the award of Rs.64,800/- granted for the injuries sustained by the petitioner, by order dated 20.09.2005, in M.V.O.P.No.703 of 2000, on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Guntur, as against the claim of Rs.5,00,000/- laid under Sections 163-A and 166 of the Motor Vehicles Act, the instant appeal is preferred seeking enhancement.

2. For the sake of convenience, the parties, hereinafter are referred to as arrayed before the Tribunal in the Original Petition.

3. The facts in brief are that on 02.05.2000 at about 10.15 p.m., the petitioner was coming on his Luna bearing No.AP 7C 574 along with his friend from the market to his house situated on Tenali to Guntur road and when they reached Sultanabad Centre, the driver of the APSRTC bus bearing No.AP 10Z 5914, driven in a rash and negligent manner at high speed, dashed the petitioner's luna, due to which he fell down and sustained injuries such as fracture to right leg, injury to his right hand and right eye. He was immediately shifted to Government Hospital, Tenali and from there he was referred to Government General Hospital, Guntur, where he undergone treatment. According to him, the concerned Station House Officer, II Town Police Station, Tenali, registered a case in crime No.150 of 2000 against the RTC driver. The petitioner claims that his right eye vision was lost totally sustained fracture to right leg thigh bone and nerves were cut to his right hand below the wrist, and steel rods were inserted to his right leg and he is unable to walk a long distance without the assistance of others. Therefore, he sought for compensation of Rs.5,00,000/- from the A.P.State Road Transport Corporation.

4. The respondent/A.P.State Road Transport Corporation filed counter opposing the claim attributing rash and negligent driving to the petitioner himself while raising other pleas also.

5. The Tribunal, based on the above pleadings, framed three issues to fix responsibility for the accident.

6. In the enquiry before the Tribunal, the petitioner examined himself as P.W.1 besides examining Dr.G.Vara Prasad, Assistant Professor of Orthopaedic in Government Hospital, Guntur, who treated his right thigh injury and little finger, as P.W.2 and also Dr.G.Manjula, Assistant Professor, Ophthalmology, who spoke about the loss of vision of petitioner's right eye in the accident, as P.W.3 and marked Exs.A1 to A4 besides marking Ex.X1, case sheet maintained by the General Hospital, Guntur. On behalf of the respondent, M.Sivaiah, driver of the RTC bus, who drove the bus at the relevant time, was examined as R.W.1 and no documents were marked.

7. The Tribunal, on appreciation of the evidence of P.W.1 and Exs. A1 to A3, while discarding the evidence of R.W.1, held that due to rash and negligent driving of R.W.1, the accident had occurred, resulting injuries to the petitioner and accordingly, held issue No.1 in favour of the petitioner. On issue No.2, the Tribunal has taken into consideration the evidence of P.Ws 2 and 3 and arrived at 50% partial permanent disability and taken the age of the petitioner as 45 years, applied multiplier '9' fixing the daily wage at Rs.40/- and monthly earnings at Rs.1,200/- and thereby arrived at Rs.1,29,600/- and deducted 50% therefrom since the partial permanent disability was only 50% and granted Rs.64,800/- with interest at 6% p.a. from the date of petition till realization.

8. The petitioner/appellant preferred the instant appeal contending in the grounds of appeal that the Tribunal did not properly appreciate the evidence on record and taken very meagre amount as the income of the petitioner without assigning any plausible reasons. The petitioner was earning Rs.10,000/- p.m. at the relevant time and, therefore, sought to grant balance amount.

9. Heard Sri P.Pullaiyah@Pullareddy, learned counsel for the appellant

and Sri P.Durga Prasad, learned Standing Counsel for the A.P.State Road Transport Corporation.

10. Perused the order and evidence on record, both, oral and documentary, let in by the petitioner.

11. The short question that arises for consideration is “Whether the petitioner is entitled to enhancement of compensation?

12. As per the evidence of P.W.2, Assistant Professor of Orthopaedic in Government Hospital, Guntur, he assessed partial permanent disability of the petitioner at 20% as he found weakness of grip in the right hand, deformity of right little finger and restriction of movements of right hip joint. According to him, he has conducted surgical interventions for the right eye and right finger and he has given various details as to the diagnosis and the treatment he has given. Likewise, P.W.3, Assistant Professor, Ophthalmology, has spoken to the disability of the petitioner at 30% for total loss of right eye vision and 5% towards disfigurement and, thus, total percentage of disability was arrived at 55%. But however, the Tribunal has taken 50% without assigning any reasons, whether the 50% disability was the functional disability or otherwise. Be that as it may, the percentage of disability can be taken as 55% in view of the fact, that there was complete loss of right vision is concerned.

13. Now turning to the age of the petitioner, the Tribunal taken his age as 45 years and applied multiplier ‘9’. But even according to the petitioner, his age on the date of filing of claim petition was shown as 51 years. But, in the medical report his age was shown as 55 years. So, it would be just and reasonable to take the age of the petitioner as 51 years as reflected from the claim petition filed by him. Therefore, the relevant multiplier is ‘11’ as per the decision of the Hon’ble Apex Court in **Sarla Verma v. Delhi Transport Corporation** and **Rajesh v. Rajbir Singh**.

14. Coming to the earnings of the petitioner, the Tribunal has taken Rs.40/- per day and right from his childhood, he was eking out his livelihood as a Weaver earning Rs.10,000/- to Rs.12,000/- per month. But there is no proof to show that he was earning Rs.10,000/- to Rs.12,000/- per month. But, however, taking Rs.40/- per day as the income of the petitioner is certainly, on

lower side. Therefore, taking the income at Rs.70/- per day, it works out to Rs.2100/- per month and Rs.25,200/- per annum and by applying multiplier '11', it comes to Rs.2,77,200/-. Since the disability is 55%, it works out to Rs.1,52,460/-. The Tribunal has not granted the other sums under non-pecuniary heads. Therefore, a sum of Rs.10,000/- towards extra nourishment, and Rs.5,000/- towards transportation and attendant charges are granted. Thus, the petitioner is entitled to Rs.1,67,460/- as against Rs.64,800/- granted by the Tribunal towards compensation.

15. The Tribunal has granted interest at 6% p.a., and the same is enhanced to 7.5% p.a., as per the decision of the Apex Court in **Rajesh v. Rajbir Singh**.

16. Accordingly, the appeal is allowed in part by modifying the impugned award passed by the Tribunal, by enhancing the compensation and also the rate of interest as stated supra. No order as to costs.

17. Consequently, miscellaneous applications, if any, filed in the instant appeal, shall stand closed.

A. SHANKAR NARAYANA, J

March 23, 2015

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