

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A.C.M.A. No.503 OF 2006

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JUDGMENT:

The petitioner having got dissatisfied with the amount of Rs.3,64,000/-(Rupees three lakhs and sixty four thousand only) granted by the learned Chairman, Motor Accidents Claims Tribunal – cum – I Additional District Judge, Warangal (for short 'the Tribunal'), as compensation, by the order, dated 22-11-2005, in M.V.O.P. No.692 of 2004, as against the claim for Rs.10,00,000/- (Rupees ten lakhs only) laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') and Rule 455 of the Andhra Pradesh Motor Vehicles Rules, 1989 (for short 'the Rules'), the instant appeal is preferred under Section 173 of the Act.

2. The appellant herein is the petitioner, in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer of tractor and trailer bearing registration Nos.AP 36T 1775 and 1776, respectively, are respondent Nos.1 and 2, respectively.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the Tribunal.

4. The facts, in brief, are that on 20-12-2003, the petitioner left his house in order to collect the amounts as part of his employment for his master from the customers and on the way when he reached near K.U.C. cross roads, he noticed a motor cycle proceeding towards Waddepally and on his request, he was permitted to ride as pillion and at about 5.20 A.M., when they

reached near Venkateswara Temple, Jawahar Colony, Hanamkonda, a tractor and trailer bearing registration No.AP 36T 1775 and 1776 driven by Banoth Venkanna in a rash and negligent manner at high speed hit the motor cycle from behind, due to which, he fell down and sustained injuries. On account of the injuries, his right leg was amputated above knee level and there were fractures to 5th, 6th and 7th ribs also. The petitioner also claimed that he was treated in Ganesh Orthopaedic Hospital, Hanamkonda and later he was treated as in-patient from 20-12-2003 onwards under Dr.P. Surender Reddy, under whom amputation was done. Therefore, he laid the claim against respondent Nos.1 and 2, who are owner and insurer of the tractor and trailer, respectively.

5. Respondent No.1, owner of the vehicle, remained *ex parte* before the Tribunal.

6. Respondent No.2 – Insurance Company, filed counter requiring the petitioner to prove the material allegations mentioned in the petition.

7. Based on the above pleadings, the Tribunal framed three issues about fixing responsibility for the accident. During inquiry, on behalf of the petitioner, besides examining himself as PW.1, has examined Dr.P. Surender Reddy and Dr. Kali Prasada Rao as PWs.2 and 3 and marked Exs.A-1 to A-15. On behalf of the contesting respondent, none was examined, but copy of insurance policy was marked as Ex.B-1.

8. The Tribunal, on issue No.1, basing on the evidence of PW.1 and Exs.A-1 to A-3, held issue No.1 in favour of petitioner.

9. On issue No.2, the Tribunal considering the evidence of PWs.2 and 3 and the nature of injuries sustained by the petitioner as recorded in Ex.A-2 and the disability certificate under Ex.A-8, though, the disability at 80% was not taken, but, still, taken at 50% and the income at Rs.3,000/- per month, worked out the compensation towards loss of dependency at Rs.3,06,000/-, besides granting a sum of Rs.20,000/- towards pain and suffering and Rs.38,000/- towards medicines and extra nourishment, making it to Rs.3,64,000/- with interest at 7.5% per annum.

10. It is the aforesaid order which is challenged in the present appeal, contending in the grounds of appeal that the Tribunal, somehow, sidelined the monthly salary the deceased was drawing at Rs.7,000/-, and without there-being any legally acceptable evidence, fixed his earnings at Rs.3,000/- per month and, therefore, sought to grant balance amount.

11. Heard Sri A. Prabhakar Rao, learned counsel for the appellant – petitioner. On behalf of respondent No.2, Ms. I. Mammu Vani, learned counsel, assisted the Court defending the Insurance Company, as she is a panel advocate.

12. The only short question that arises for consideration is, whether there was any loss of earning capacity on account of disability sustained by the petitioner?

13. So far as injuries sustained by the petitioner are concerned, they are numbering five as shown at page No.7 of the order under challenge. The evidence of PWs.2 and 3 is clear to show that there has been amputation of right leg above knee level,

and that, that was the reason, the disability at 80% was assessed by PW.3. No doubt, it was elicited in his cross examination that Ex.A-15 (sic.Ex.A-8) disability certificate issued by him, the then one of members of the Medical Board, contains the endorsement that the said certificate can not be used for judicial proceedings, but however, denied the suggestion that the disability assessed by him is not correct. Be that as it may, since the very amputation reflects the disability which amputation was above knee level of right leg, if not 80%, but, it can be construed at 60%, as the petitioner suffers from disfiguration throughout his left and yet to marry and his nature of employment being collection of amounts from the customers of his employer. The Tribunal has taken Rs.3,000/- as the monthly earnings of the petitioner, and the annual earnings works to Rs.36,000/-, and when the disability at 60% is taken into consideration, it comes to Rs.21,600/-. Since the petitioner was 25 years old on the date of accident, the relevant multiplier is '18' as per the decision of the Hon'ble Supreme Court in **Sarla Verma (Smt) and others v. Delhi Transport Corporation and another**^[1]. When the multiplier '18' is applied to Rs.21,600/-, it works out to Rs.3,88,800/-. Thus, the amount of Rs.3,88,800/- is granted as against Rs.3,06,000/-. The other amounts of Rs.20,000/- towards pain and suffering and Rs.38,000/- towards medicines and extra nourishment are maintained. Thus, in all, the petitioner is entitled to Rs.4,46,800/- (Rupees four lakhs forty six thousand and eight hundred only) as against the amount of Rs.3,64,000/- granted by the Tribunal. The rate of interest at 7.5% granted by the Tribunal is maintained as per the decision of the Hon'ble Apex Court in **Rajesh and others**

v. Rajbir Singh and others^[2].

14. In the result, the appeal is allowed in part, and the order and decree, dated 22-11-2005, in O.P. No.692 of 2004, passed by the Tribunal are modified, enhancing the compensation to Rs.4,46,800/- (Rupees four lakhs forty six thousand and eight hundred only) from Rs.3,64,000/- with interest thereon at the rate of 7.5% from the date of petition till realization. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

February 19, 2015.

Mgr 4

^[1] . (2009) 6 SCC 121

^[2] . 2013 ACJ 1403