THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.31 of 2013

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 by the appellant/petitioner challenging the judgment and award dated 18.12.2008 passed in M.V.O.P. No.107 of 2006 on the file of the Motor Accidents Claims Tribunal-cum-Principal District Judge, Kadapa (for short, 'the Tribunal')

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

3. The facts leading to filing of the present appeal, in brief, are as follows:

On 09.11.2004 at about 6:30 PM, the petitioner boarded a Jeep bearing No.AP-04-U-9072 at Nandimandalam. When the jeep reached Four Roads junction of Nandimandalam, the driver of the jeep had driven the same in a rash and negligent manner, due to which, the petitioner fell down from the jeep and sustained grievous injuries on the head and other parts of the body. The accident occurred due to the rash and negligent driving of the driver of the jeep against whom the Station House Officer, Pendlimarri Police Station registered a case in Crime No.127 of 2004 under Sections 337 and 338 of I.P.C. Due to injuries, the petitioner has taken treatment in Government General Hospital, Kurnool, Sarojini Devi Eye Hospital, Hyderabad, Osmania General Hospital, Hyderabad and NIMHANS, Bangalore. The petitioner lost eye sight due to head injury. The parents of the petitioner has spent huge amount towards treatment and medicines. By the time of accident, the petitioner was aged about 9 years. Hence, the petition is filed claiming compensation of Rs.15,00,000/-. The jeep bearing No. AP-04-U-9072, which belongs to the first respondent, was insured with the second respondent as on the date of accident.

4. The first respondent remained *ex-parte.*

5. The second respondent filed written statement denying all the averments made in the petition including the manner of the accident and the nature of the injuries sustained by the petitioner. The accident occurred due to the negligent act of the petitioner and there was no negligence on the part of the driver of the jeep. The petitioner is not entitled to claim compensation unless he proves that the driver of the

jeep was having valid and effective driving licence at the time of accident. The amount of compensation claimed by the petitoner under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

6. Basing on the above pleadings, the Tribunal framed the following issues:

1. Whether the accident did not occur due to rash and negligent driving of the Jeep bearing No. AP 04 U 9072 belonging to respondent No.1 and insured with second respondent by its driver?

2. Whether the petitioner is entitled for compensation for the injuries sustained by him, if so, to what amount and from whom?

3. To what relief?

7. During the course of trial, on behalf of the petitioner, P.Ws.1 to 3 were examined and Exs.A.1 to A.11 were marked. On behalf of the respondents, no oral or documentary evidence was let in.

8. On appraisal of oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the jeep bearing No.AP-04-U-9072, which resulted in injuries to the petitioner, and allowed the petition in part by awarding compensation of Rs.2,75,000/- with interest at the rate of 6% per annum from the date of petition till the date of deposit. Feeling aggrieved by the judgment and award of the Tribunal, the petitioner preferred the present appeal.

9. Having received the notices, the respondents did not choose to appear and oppose the appeal. Hence, this Court is inclined to dispose of the matter on merits in the absence of the respondents.

10. Sri Sasank, the learned counsel representing
Sri K.S.Murthy, the learned counsel for the petitioner/appellant submitted that the Tribunal has committed an error while taking the income of the petitioner as Rs.15,000/- per annum. He further submitted that the Tribunal has awarded meagre amount of Rs.18,000/- towards pain and suffering though the petitioner lost both his eyes. He also submitted that the Tribunal has not awarded just and reasonable compensation.

11. Basing on the contentions raised by the learned counsel for the petitioner, the

only point that arises for consideration in this appeal is:

> *Whether the Tribunal has awarded just and reasonable compensation to the petitioner or not?*

POINT:

12. The finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of the jeep became final in view of non-filing of the appeal by the respondents. Therefore, there is no need to discuss that issue elaboretely in this appeal. As per the testimony of PW.3, he examined the petitioner on 05.08.2005 and found that opticatrophy in both eyes. So, the visual handicap is 100%. He further deposed that there is no chance of improvement of the vision of the petitioner. If the testimony of PW.3 is taken into consideration, the petitioner lost his eye vision. As per the recitals of Ex.A.4, the petitioner incurred 100% disability as he lost eye vision for both eyes. A perusal of Exs.A.3 and A.7 to A.10 reveals that the petitioner has taken treatment in different hospitals, but unfortunately the petitiner lost his eye vision at the age of 9 years. As per the findings of the Tribunal also, the petitioner incurred 100% disability. As per the medical bills produced by the petitioner, he spent an amount of Rs.22,000/-. The Tribunal has rightly awarded an amount of Rs.22,000/- towards medicines. The material available on record clinchingly establishes that the parents of the petitioner have taken the petitioner to different hospitals for treatment. Taking into consideration the facts and circumstances of the case, this Court is inclined to award an amount of Rs.40,000/- towards transportation charges and loss of earnings. The Tribunal has taken the income of the petitioner as Rs.15,000/- per annum and awarded an amount of Rs.2,75,000/-. The predominant contention of the learned counsel for the petitioner is that the amount of compensation awarded by the Tribunal is on lower side. To substantiate the same, he has drawn my attention to the following decisions:

1. **Michael v. Regional Manager, Oriental Insurance Company Limited and another**, wherein at para No.14, the Hon'ble Apex Court held as under:

> "Having bestowed our serious consideration and having noted the various disadvantages suffered by the appellant by virtue of the accident, we are convinced that the appellant is entitled for still higher amount than what has been granted by the Tribunal as well as the High Court on account of pain and sufferings as well as loss of amenities. As held by us earlier, though it

will be impossible to make a precise assessment of the pain and suffering of the appellant considering the age at which the appellant met with the accident and the consequent disability and also taking note of the deprivation of better prospects in the life of the appellant due to the physical disability suffered, we determine the compensation in a sum of Rs.4 lakhs as claimed by the appellant under the following heads:

Towards pain and sufferings Rs.2,80,000/-

and permanent disability

Towards medical expenses, Rs. 20,000/-

conveyance, nourishing,

food and attendant charges

Towards loss of amenities Rs.1,00,000/-

Total Rs.4,00,000/-"

2. Mallikarjun v. Divisional Manager, National Insurance Company Limited and another, wherein at para No.12, the Hon'ble Apex Court held as under:

"Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc. should be, if the disability is above 10% and up to 30% to the whole body, Rs.3 lakhs; up to 60%, Rs.4 lakhs; up to 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability up to 10%, it should be Rs.1 lakh, unless there are exceptional circumstances to take a different yardstick."

3. Raj Kumar v. Ajay Kumar and another, wherein at para Nos.6 and 8, the Hon'ble Apex Court held as under:

"6. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accidents injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (*'Disabilities Act' for short). But if any of the disabilities enumerated in section 2(i) of the *Disabilities Act* are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation."

... ...

8. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terns of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this court in Arvind Kumar Mishra v. New India Assurance Co.Ltd. - 2010(10) SCALE 298 and Yadava Kumar v. D.M., National Insurance Co. Ltd. - 2010 (8) SCALE 567)."

4. Basappa v. T.Ramesh, wherein at para No.13, the Hon'ble Apex Court held as under:

> “Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanednt disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.”

13. Unfortunately the petitioner lost his eye sight at the age of 9 years. Due to loss of eye vision, the petitioner may suffer a lot. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, this Court is inclined to award an amount of Rs.6,00,000/- towards permanent disability and Rs.10,000/- towards extra nourishment. Thus, the amount of compensation to which the petitioner is entitled to under various heads is as follows:

01.	Permanent disability	Rs.6,00,000/-
02.	Medical expenses	Rs. 22,000/-
03.	Extra nourishment	Rs. 10,000/-
04.	Transportation charges and loss of earnings	Rs. 40,000/-
	Total:	Rs.6,72,000/-

It is not in dispute that the jeep bearing No.AP-04-U-9072, which belongs to the first respondent, was insured with the second respondent as on the date of accident. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation of Rs.6,72,000/- to the petitioner.

14. In the result, the Appeal is allowed in part by enhancing the quantum of

compensation from Rs.2,75,000/- to Rs.6,72,000/- with interest at the rate of 7.5% per annum on the enhanced amount of compensation from the date of petition till the date of deposit. There shall be no order as to costs.

15. Consequently, Miscellaneous Petitions, if any, pending in this Appeal shall stand closed.

T.SUNIL CHOWDARY, J

Date: 08.10.2015

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