

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.547 of 2005

JUDGMENT:

The instant appeal is preferred by the petitioner in O.P.No.272 of 2000 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Guntur (for short, 'the Tribunal'), dissatisfied with the award of an amount of Rs.60,300/- as compensation by order dated 29.09.2004 as against the claim for Rs.1,30,000/- laid under Section 163-A of the Motor Vehicles Act, 1988 (for short, 'the Act') and the Rules framed thereunder.

2. The appellant herein is the petitioner, while the respondent Nos.1 and 2, who are the owner and insurer of the water tanker bearing registration No.AP 16U 6642 respectively, were respondents in the original petition.

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

4. The facts in brief are that the petitioner was riding pillion on Bajaj Sunny moped bearing registration No.AP 7J 8021 and proceeding from Gujjanagundla side to Ring road, when it reached near first line, Navabharat Nagar, a water tanker bearing registration No.AP 16U 6642 driven at high speed and in a rash and negligent manner hit his moped, due to which, both the petitioner and the rider of the moped fell down and they were shifted to Government General Hospital, Guntur. According to the petitioner, he sustained fracture of right thigh bone and grievous injuries to his head and his right leg was bent and there was shortening of his right leg and he has been limping and the movements also became restricted and he sustained permanent disability. He claims that he was 23 years old as on the date of accident and earning Rs.100/- per day as a rod bending worker. Even the Station House Officer, Pattabhipuram Police Station registered a case in Crime No.68 of 2000 against the driver of the water tanker. Hence, the petitioner sought to fix the liability against the respondents 1 and 2, who are the owner and insurer of the water tanker.

5. As seen from the order of the Tribunal, both the respondents have engaged advocates, but however, the 1st respondent failed to file written statement and 2nd

respondent opposed the claim, contending that the accident had occurred only due to the rash and negligent driving of the Sunny moped and the claim is bad for non-joinder of the owner and insurer of the said moped on which the petitioner was riding pillion and sought to dismiss the claim.

6. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident. During enquiry before the Tribunal, the petitioner examined himself as P.W.1 besides examining Dr.Y.V.K.Durga Prasada Rao as P.W.2 and marked Exs.A.1 to A.6 in order to substantiate his claim made before the Tribunal. On behalf of the respondents, no witnesses were examined and no documents were marked.

7. The Tribunal, on appraisal of evidence, both, oral and documentary, let in by the parties, on issue No.1, held that due to the rash and negligent driving of the driver of the water tanker, the accident had occurred and accordingly, found issue No.1 in favour of the petitioner, but however, observing that there was contribution to the extent of 50% by the driver of the Moped for taking place of the accident, apportioned the negligence at 50% each on the drivers of the respective vehicles. The Tribunal, on issue No.2, basing on the evidence of P.Ws.1 and 2 and Exs.A.3 to A.6, granted Rs.3,150/- towards medical expenses and attendant charges including transport charges, Rs.5,100/- towards purchase of the medicines covered by Ex.A.5, and towards post-operative treatment a sum of Rs.750/- was awarded, making the entire amount to Rs.9,000/- under these heads. The Tribunal has also taken the loss of temporary earnings, since he must have become immobilized totally for a period of three months, assessing the same at Rs.1,875/- per month, and, thus, granted Rs.5,625/- towards loss of temporary earnings. Basing on the disability certificate Ex.A.4 and the evidence of P.W.2, Medical Officer, the Tribunal arrived the total disability at 10% and fixed Rs.1,800/- as monthly earnings and applied multiplier '17' as per the II Schedule to Section 163-A of the Act and arrived at Rs.30,600/- towards loss of earning capacity on account of partial permanent disability, and, thus, arrived at a total compensation of Rs.45,225/-. Besides the same, the Tribunal has also awarded a sum of Rs.15,000/- towards non-pecuniary damages for pain and suffering, and, thus, a total amount of Rs.60,300/- was arrived at and granted half of the amount, which works out to Rs.30,150/- and granted the same with interest at 9% per annum.

8. It is that order which is challenged by preferring the instant appeal contending in

the grounds of appeal that the compensation being granted by the Tribunal is too meager and that there is contributory negligence on the part of the driver of the Sunny moped, on which the petitioner was riding pillion, and the Tribunal did not properly appreciate Ex.A.2 copy of charge sheet filed by the petitioner, which shows that the driver of the lorry alone was liable for the offence punishable under Section 338 of I.P.C., and, therefore, the finding recorded by the Tribunal, to the extent of contributory negligence attributed to the petitioner, is unsustainable. It is also stated that the Tribunal ought to have applied multiplier '18' as per the II Schedule to Section 163-A of the Act, but not '17'. It is further contended that the Tribunal was not right in taking the percentage of disability at 10% and it ought to have taken at 20% as per the disability certificate, Ex.A.4 issued by the Medical Board and the evidence of the doctor who was examined as P.W.2. It is still further contended that the Tribunal ought to have taken earnings of the petitioner at Rs.3,000/- per month and the Tribunal was not right in taking the monthly earnings of the petitioner at Rs.1,500/-.

9. Heard Sri N.Subbarao, learned counsel for the appellant. Despite service of notices to respondent Nos.1 and 2, who are the owner and insurer of the accident vehicle, none represents them. Therefore, proceeded to dispose of the instant appeal on merits.

10. A perusal of the observation made by the Tribunal in paragraph No.7 of the order would show that the evidence of P.W.1 clearly shows that the moped was going on the right side and the water tanker was taking right turn at the time of the accident, and, therefore, it was very difficult to infer that when the water tanker was taking right turn, the moped must have passed in front of it. The said observation of the Tribunal appears to be based on assumption rather than based on oral or documentary evidence supporting it. As seen from the appendix of evidence, the scene of occurrence panchanama is not forthcoming. In such an event, it is not open for the Tribunal to give such a finding basing on the assumption made by P.W.1 without any documentary evidence. Therefore, that finding requires to be set aside, and, consequently, the observation made by the Tribunal in regard to the contributory negligence to the driver of the moped is modified holding that the total negligence is only on the part of the driver of the water tanker even as evidenced by the copy of charge sheet, Ex.A.2, which clearly shows that the accident has occurred only due to the rash and negligent driving of the driver of the water tanker.

11. Coming to the compensation awarded by the Tribunal under various heads, description of injuries contained in Ex.A.3 were projected in paragraph-9 of the order and the evidence of P.Ws.1 and 2. Even in paragraphs 11 and 14 respectively. It is true, the disability certificate Ex.A.4 would show that the disability of the right lower limb was to a tune of 20%. The Tribunal made observation that since P.W.2 has expressed his inability stating that he cannot give percentage of the disability of entire body and the percentage spoken to by him is given on the basis of experience gained by him only, arrived at 10% as there was terminal stiffness of right knee and shortening of right leg. Of course, the Tribunal has not made the measurement of shortening of the right leg in paragraph-15 of the order. Even Ex.A.4 does not speak about the shortening of right leg except mentioning that there was 20% disability on account of stiffness to right knee, in such an event arriving at the partial permanent disability at 10% by the Tribunal cannot be faulted with.

12. Now turning to the amount awarded by the Tribunal at Rs.5,625/- for three months towards temporary loss of earnings, the same is not disturbed. Now coming to the monthly income at Rs.1,500/- arrived at by the Tribunal, in fact, in paragraph-13, the Tribunal has taken the monthly income at Rs.1,875/-, basing on which, the temporary loss of earnings were worked out. Therefore, the monthly earnings of the petitioner is taken at Rs.1,875/-, which works out to Rs.22,500/- per annum. The relevant multiplier as per the decision of the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another** is '17' for a person aged 30 years. Therefore, when the multiplier '17' is applied, the loss of future earnings per year works out to Rs.3,82,500/- (Rs.22,500/- x '17'). Since the disability is only 10%, the future loss of earning capacity works out to Rs.38,250/- (Rupees thirty eight thousand two hundred and fifty only) and the same is granted. The Tribunal has granted Rs.9,000/- towards medicines, engaging an attendant, transport charges and extra nourishment. Since the petitioner sustained a grievous injury and keeping in view, the fact that he suffered pain and also undergone treatment, the same is enhanced to Rs.15,000/-. The Tribunal has granted Rs.15,000/- towards non-pecuniary damages for pain and suffering. The same is maintained.

13. Thus, the petitioner is totally entitled to a sum of Rs.73,875/- (Rupees seventy three thousand eight hundred and seventy five), as against Rs.30,150/- (Rupees thirty thousand one hundred and fifty), and the same is accordingly granted, with interest at 7.5% per annum on the entire amount from the date of petition till

realisation, as against 9% granted by the Tribunal, as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**.

14. Accordingly, the instant appeal is allowed in part modifying the order under challenge passed by the Tribunal, by enhancing the compensation and reducing the rate of interest, as indicated above, and confirming the same in all other respects. 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

09th February, 2015

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