

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A. C.M.A. No.849 OF 2005

JUDGMENT:

Dissatisfied with the award of Rs.1,83,000/- towards compensation as against the claim of Rs.2,00,000/- originally sought, and, thereafter, amended, by increasing it to Rs.10,00,000/-, laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') read with Rule 475/1B of the A.P. Motor Vehicle Rules, 1989, seeking enhancement of the same, petitioner preferred this Civil Miscellaneous Appeal against the order and decree, dated 05-10-2004, passed by the learned Chairman, Motor Accidents Claims Tribunal - cum - IX Additional Chief Judge (F.T.C.), City Civil Courts, Hyderabad, in O.P. No.2348 of 2001.

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, respectively of the auto-trolley bearing No.AP-13-W-4 that involved in the accident, are respondent Nos.1 and 2, respectively.

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

4. The facts, in brief, are that he is a Weaver by profession and resident of Gattuppal village and on 18-05-2001, while he was proceeding along with a person on Hero Honda Motorcycle bearing No.AP-24-G-2688, from Gattuppal to Pochampally, and when they reached the outskirts at about 12-30 hours, an auto-trolley bearing No.AP-13-W-4 driven in a rash and negligent manner at high speed,

dashed against their motorcycle, due to which, both of them fell down and the petitioner sustained compound fracture of right humerus with compound comminuted supracondylar and right femur and other multiple injuries. According to him, he was shifted to CDR Hospital for treatment and he was treated thereat in Jeevandata's scheme and he was drawing a salary of Rs.3,500/- per month and contributing the entire amount to his family, and, therefore, sought Rs.10,00,000/- lakhs as compensation.

5. Respondent No.1, owner of the auto-trolley that involved in the accident, remained *ex parte* before the Tribunal.

6. Respondent No.2, insurer of the auto-trolley, opposed the claim by raising various pleas.

7. The Tribunal framed three (3) issues in the direction of fixing responsibility for the accident. During enquiry, the petitioner examined himself as PW.1 besides examining Dr. T. Prasad, who issued disability certificate as PW.2, and also an employee of the cooperative society, as PW.3, and marked Exs.A-1 to A-27 apart from Exs.X-1 to X-10, as regards entitlement for the compensation claimed. On behalf of respondent No.2, insurance company, no witnesses were examined.

8. It is to be observed that the Tribunal, though, obligated with the duty to mention "appendix of evidence" to the order passed by it, strangely, the same is not forthcoming, thereby, deviating from the relevant rule, which prescribes the form of the order or the judgment.

9. The Tribunal, on appraisal of evidence let in by the petitioner himself as PW.1 supported by the contents of Exs.A-1, A-2 and A-4, which are certified copies of first information report (FIR), charge

sheet and the observation of scene of offence (*mahajir*), held issue No.1, in favour of the petitioner.

10. (a) On issue No.2, concerning determination of compensation as regards monthly earnings, the Tribunal has extracted a portion of evidence of PW.3 and made a definite observation that in view of the answers given in the extracted portion, the stand of the petitioner and PW.3 that he was earning monthly income of Rs.3,500/- on average was falsified as Exs.X-1 to X-8 do not support what was asserted by PWs.1 and 3. Further portion of PW.3's evidence was also extracted at page No.5 and taking total payment for a period of seven months from May, 2001 to December 2001, finding only Rs.2,482/- i.e., Rs.300/- per month, on average, as the income, as reflected from the exhibits in X-series, and, therefore, taken notional income of the petitioner at Rs.15,000/- per annum.

(b) The Tribunal has also observed at page No.6 that the claim of the petitioner, originally laid was for Rs.2,00,000/- for the injuries sustained by him and later filed I.A. No.2071 of 2002 amending the claim by enhancing the compensation to Rs.10,00,000/-, however, by making an observation that except amending the petition at column No.25 and the relief portion, the petitioner has not changed anything or furnished or sought amendment of the application and, thus, recorded a definite finding that the case of the petitioner even as per the amended claim for Rs.10,00,000/- have to be considered on the same facts originally stated in the claim petition.

(c) Then, the Tribunal proceeded with relevant multiplier '17', taking the age of the petitioner as 32 years on the date of accident, while rejecting his stand that he was 28 years old, as pleaded in the petition, and worked out loss of earning capacity with 50% disability, by applying the said multiplier, and granted Rs.1,27,500/- including the amount of Rs.25,000/- earlier granted under Section 140 of the

Act. The Tribunal has also granted Rs.2,000/- towards transportation charges, Rs.10,000/- towards extra-nourishment, Rs.10,868/- towards purchase of medicines, and, thus granted a total sum of Rs.1,83,368-50 paise towards compensation with interest at 6% per annum.

11. It is the aforesaid order, which is sought to be modified in the instant appeal by the petitioner contending in the grounds of appeal that the Tribunal, somehow, overlooked the fact that the petitioner has undergone operations thrice i.e., on 19-05-2001, 31-05-2001 and 10-06-2001 and taken treatment for more than six (6) months. It is also stated that the Tribunal ought to have granted entire medical expenses and ought to have observed that the petitioner sustained compound fracture of right humerus with a compound comminuted fracture to right femur, besides other multiple injuries and there is mal-union of the fracture in the knee, despite the fact that PW.2 has asserted as to these injuries. It is stated that the Tribunal having seen the records through Exs.A-25, Ex.A-21 photographs, Ex.A-22 disability certificate, Ex.A-26 X-rays and Ex.A-2, granted very meagre sum, in respect of pain and suffering. It is further stated that the Tribunal was not right in disbelieving Ex.A-25 case sheet of C.D.R. Hospital and Ex.A-6 Jeevandata credit bill, which disclose that the petitioner was given treatment under Jeevandata Scheme, and, therefore, sought to grant balance amount of Rs.8,17,000/-.

12. Heard Sri C. Buchi Reddy, learned counsel for the petitioner (appellant). Though, served with notice, none appears for the respondents, who are the owner and insurer, respectively of the auto-trolley involved in the accident.

13. The point that arises for consideration is whether the

petitioner is entitled to enhancement of compensation?

14. It is the submission of the learned counsel for the petitioner that the Tribunal was not right in taking the notional income at Rs.15,000/- based on Schedule - II to Section 163-A of the Act.

It is contended that in the decision in **Mohan Soni v. Ram Avtar Tomar and others**, the Hon'ble Apex Court taken the monthly earnings of the petitioner therein, who was a cart-puller, at Rs.3,300/-. He relied on yet another decision of the Hon'ble Apex Court in **Sri Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Limited**, wherein the monthly earnings of a coolie (labourer) was taken at Rs.4,500/-, who sustained injuries in an accident.

15. Learned Counsel also placed reliance on the decision of this Court in **National Insurance Company Limited, Nizamabad v. Saheb @ Gadivan Saheb and another**, for the proposition that award need not be limited to the wages specified in the claim petition as the only embargo being that that it should be just compensation, and placed reliance on the decision of the Hon'ble Apex Court in **Nagappa v. Gurudayal Singh and others**.

16. Basing on the above legal principles, it is his submission that the Tribunal was not right in taking the notional income of the petitioner at Rs.15,000/- and, therefore, erred in fixing the monthly income and sought to raise it to Rs.2,400/- per month as observed by the Hon'ble Apex Court.

17. Since none appears for respondents Nos.1 and 2, the instant appeal is disposed of on merits.

18. So far as the stand taken by the respondents is concerned

before the Tribunal is concerned, initially adverting to the monthly income, the decision in **Mohan Soni's Case** (Supra 1), there was concrete evidence to show that the cart-puller was earning Rs.3,300/- per month and the question before the Hon'ble Supreme Court was that whether the Tribunal as well as the High Court were erred in pegging down disability of the appellant therein which was amputation of one leg below the knee to 50%, despite the fact that loss of earnings capacity may be as high as 100%, but in no case less than 90%. Further, the accident therein had occurred in December, 2003.

19. In **Sri Ramachandrappa's Case** (Supra 2), the petitioner was a coolie, aged 35 years and earning Rs.4,500/- per month and the Hon'ble Apex Court while observing that the Tribunal has no reason to reduce the monthly income from Rs.4,500/- to Rs.3,000/-, taken the monthly earnings at Rs.4,500/-. The accident in that case had taken place in the year 2004.

20. In the instant case, the accident has occurred in the month of May, 2001. Therefore, it is difficult on facts to appraise the monthly earnings fixed by the Hon'ble Apex Court in the said decisions referred supra. This apart, the evidence of PW.3 is crucial in the instant case. The petitioner, though, examined PW.3 to substantiate his stand that he was earnings Rs.3,500/- per month, but the Tribunal elaborately discussing the evidence of PW.3 and even extracting the answers given by him, which portions occur at page Nos.4 and 5 of the order under challenge and finding that they would show earnings of the petitioner on average at Rs.300 per month, however, excluding the same, has taken notional income at Rs.15,000/- per annum. It is difficult to accede to the submission of the learned counsel for the petitioner to take the notional income either at Rs.3,000/- or Rs.4,500/- per month, as contended, more particularly, when PW.3 was examined in that direction.

21. In fact, though, the petitioner was aged 32 years on the date of accident, which finding was recorded by the Tribunal, still, the Tribunal has applied multiplier '17', basing on Schedule - II to Section 163-A of the Act. However, when the legal principles laid down by the Hon'ble Apex Court in **Sarla Verma v.**

Delhi Transport Corporation, is kept in view, the relevant multiplier is '16', but, it is not an appeal preferred by the insurance company questioning the quantum of compensation awarded by the Tribunal.

22. Concerning medical bills, learned counsel submits that the Tribunal went wrong in discarding the bills issued by CDR Hospital and other hospitals such as Abhinav Orthopaedic Hospital, Niveditha Orthopaedic Centre, MGM Hospital, Warangal Amaravathy Institute of Medical Sciences, Guntur, MVS Accident Hospital, Apollo Hospital, Hyderabad, Osmania General Hospital, Hyderabad and Uday Clini, Nampally. The Tribunal has recorded a definite finding that he has attended to these hospitals and undergone treatment and the documentary evidence was not proved in accordance with the evidentiary rule by examining any of the persons connected with the medical record referring to CDR Hospital. That finding recorded by the Tribunal, certainly, does not warrant any interference at all as it is based on proper appreciation of evidence on record.

23. Turning to the amounts granted by the Tribunal, so far as loss of future earning capacity is concerned, the amount of Rs.1,27,500/- granted by the Tribunal does not warrant interference as the Tribunal has accepted 50% partial permanent disability spoken to by PW.2. It is not a case of amputation. In fact, PW.2's evidence would clearly show as to how he has assessed 50% disability, so also the disability certificate issued by him, basing on the stiffness of the knee and lower right thigh and other observations based on which, opinion was

tendered, and was accepted by the Tribunal.

Be that as it may, since the Tribunal has accepted 50% disability and insurance company has not challenged that finding recorded, it is not disturbed. When kept in view, the circumstance that the petitioner has undergone surgical interventions thrice, which details are, of course, not forthcoming, still, the transportation charges are raised to Rs.9,000/- from Rs.2,000/- and the pain and suffering to Rs.35,000/- from Rs.25,000/-. Except with regard to the above amounts, the other amounts granted by the Tribunal are maintained.

24. Thus, the petitioner is entitled to a total compensation of Rs.2,00,000/- (Rupees two lakhs) as against Rs.1,83,000/- awarded by the Tribunal, and the same is accordingly granted, with enhanced interest at 7.5% per annum, as against 6% granted by the Tribunal, on the entire compensation, from the date of petition till realisation, as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**.

25. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation and the rate of interest, as indicated above. There shall be no order as to costs.

26. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

A. SHANKAR NARAYANA, J

April 13, 2015.

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