

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

MACMA No. 1069 of 2005

JUDGMENT:

The instant appeal is preferred, challenging the quantum of compensation determined by the Tribunal at Rs.3,61,600/- for the injuries sustained by the petitioner, aggrieved by the order, dated 17.03.2005, in OP No.247 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Adilabad (for short 'the Tribunal'), by the second respondent – Insurance Company.

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

3. The facts, in brief, are that on 09.10.2001 at about 10.30 AM, while the petitioner along with his friend was proceeding on a Suzuki motor bike bearing registration No.AP-23G-684 from Nirmal to Kondapur and when they reached the outskirts of Kondapur village, a jeep bearing registration No.AP-1C-4500, driven at high speed in a rash and negligent manner, dashed the motor bike resulting the petitioner sustaining injuries. According to the petitioner, he has undergone treatment at local hospital and also in Nizams Institute of Medical Sciences, Hyderabad, for better treatment, having been referred from Government Hospital, Nirmal. He states that he spent Rs.75,000/- towards medical expenses. The Police also

registered a case in Crime No.60 of 2001 against the jeep driver. Therefore, he laid the claim quantifying it as Rs.4,00,000/- distinctly mentioning the amounts against each head.

4. The first respondent who is the owner of the jeep remained *ex parte* before the Tribunal.

5. The second respondent being insurer opposed the claim raising various pleas and reserving its right to agitate defences available to the owner of the vehicle. Even the Insurance Company has obtained permission under Section 170 of the Motor Vehicles Act, 1988 from the Tribunal.

6. The Tribunal framed three issues about the responsibility for the accident. During enquiry, the petitioner examined himself as PW.1 and also examined Dr. B. Suresh as PW.2 and marked Exs.A1 to A73 in order to substantiate his claim for the compensation. On behalf of the second respondent, no witnesses were examined and no documents were filed.

7. The Tribunal, on appraisal of evidence on issue No.1, held it in favour of the petitioner.

8. On issue No.2, the Tribunal, basing on the evidence of PW.2 and the medical records from Nizams Institute of Medical Sciences Hospital, Hyderabad, more particularly, on Exs.A2 and Ex.A73 which is discharge card issued from NIMS Hospital, though, mentioning that they were not technically proved by examining the medical officer from NIMS Hospital, still, believed the contents therein and, having found that the vision of right

eye was lost in the accident, granted a sum of Rs.75,000/- towards pain and suffering for the injuries sustained by the petitioner. Concerning the loss of earning capacity on account of partial permanent disability, believing the evidence of PW.2 at 40% disability, taken the income at Rs.48,000/- per annum, applied multiplier '18' taking the age of the petitioner as 26 years and arrived at Rs.2,30,400/-. Towards medical expenses, a sum of Rs.44,200/- was granted by the Tribunal, while discarding the amounts mentioned in Exs.A48 to A62 and A64 to A67 bills since there was some discrepancy in regard to series of bills that were issued in different dates and entertaining some doubt about their genuinity, though not clearly mentioned as to how the doubt was created by referring to each bill, thus, the Tribunal granted a total sum of Rs.3,61,600/- with interest at 9% p.a.

9. It is the aforementioned order which is under challenge in the instant appeal contending in the grounds of appeal that the Tribunal did not properly appreciate the evidence on record. It is also stated that granting Rs.75,000/- towards pain and suffering, when the petitioner was in the hospital only for 10 days, was on higher side. Even granting Rs.44,200/- towards medical expenses having observed that there was discrepancy in the bills was improper and, even the disability at 40% taken by the Tribunal in the absence of any certificate from the competent medical board is also improper and for the said reasons sought to set aside the order and decree passed by the Tribunal.

10. Heard Sri E. Venugopal Reddy, learned counsel for the

appellant – Insurance Company, and Sri S. Surender Reddy, learned counsel for the first respondent/petitioner. The second respondent refused to receive the notice in the instant appeal and such refusal can be treated as proper service of notice on him.

11. Perused the order and evidence on record both, oral and documentary, let in by the petitioner. So far as the amount of Rs.75,000/- granted by the Tribunal towards pain and suffering is concerned, the submission of the learned counsel for the appellant is that since the petitioner was treated in the hospital only for 11 days the said amount was on higher side, but, however, the fact that the petitioner lost vision of right eye cannot be ignored. When viewed in that angle, certainly, the amount of Rs.75,000/- granted by the Tribunal towards pain and suffering cannot be construed as having been determined on higher side.

12. Coming to the income, learned counsel for the appellant submits that in the absence of any documentary evidence let in by the petitioner, more particularly, the admissions made by him in his cross-examination that he has obtained license as a grain merchant only subsequent to the accident and also filing of income tax returns was subsequent to the accident and, therefore, the Tribunal was not right in fixing the annual income at Rs.48,000/-. However, the fact that he was a grain merchant is not in dispute, which finding was recorded by the Tribunal. When, even reducing the annual income from Rs.48,000/- to Rs.36,000/- and taking even the disability at 40%, applying the multiplier '17' as per II Schedule to Section 163-A of the MV Act,

since the petitioner was 26 years old on the date of accident, the amount of Rs.2,30,400/- arrived at by the Tribunal was lesser when compared to the amount that would have to be determined at Rs.36,000/- per annum with 40% disability, applying multiplier '17', which would work out to Rs.2,44,800/-. Therefore, there is no merit even in that submission. Hence, the amount of Rs.2,30,400/- granted by the Tribunal is maintained towards loss of earning capacity.

13. The amount of Rs.44,200/- granted by the Tribunal also cannot be interfered with for the reason that the Tribunal has clearly mentioned that it has excluded the amounts covered under Exs.A48 to A62 and A64 to A67 bills, since there was some discrepancy with regard to series of bills and, thus, taken the amounts mentioned in other bills which works out to Rs.44,206-80 ps., hence, even there is no merit in the said contention. Therefore, the amount of Rs.44,200/- granted by the Tribunal is maintained.

14. Concerning the interest at 9% p.a., granted by the Tribunal, the same is reduced to 7.5% p.a., in view of the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**^[1] on the entire amount of Rs.3,61,600/- granted by the Tribunal.

15. Accordingly, the appeal is allowed in part reducing the interest from 9% p.a., to 7.5% p.a., maintaining the order in all other respects as indicated above. There shall be no order as to costs.

16. As a sequel thereto, miscellaneous applications, if any, pending in this appeal shall stand closed.

A. SHANKAR NARAYANA, J

Date: 20.03.2015.

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[\[1\]](#) 2013 ACJ 1403 = 2013(4) ALT 35