

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.563 OF 2006

JUDGMENT:

The instant appeal is preferred by the petitioner in O.P. No.1864 of 2003 on the file of Chairman, Motor Accidents Claims Tribunal – cum – II Additional Metropolitan Sessions Judge, Hyderabad – cum – XVI Additional Chief Judge, Hyderabad (for short 'the Tribunal'), dissatisfied with the award of Rs.65,000/- (Rupees sixty five thousand) as compensation, by the order and decree, dated 05-12-2005, in O.P. No.1864 of 2003 by the Tribunal, towards loss of earning capacity on account of partial permanent disability suffered by him as against the claim of Rs.1,75,000/-(Rupees one lakh and seventy five thousand) laid under Section 166 of Motor Vehicles Act,1988 (for short 'the Act') and Rule 455 of Andhra Pradesh Motor Vehicles Rules, 1989 (for short 'the Rules'), read with amended Act 54 of 1994, seeking enhancement.

2 . The appellant herein is petitioner in the OP before the Tribunal, while respondent Nos.1 and 2 – Andhra Pradesh State Road Transport Corporation (APSRTC) 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 03-04-2001 at about 8.20 P.M., while the petitioner along with his brother-in-law was proceeding on his bicycle from Koti towards Talabkatta having sold readymade watches on foot-path at Koti and, when they reached near Central Bus Station, an RTC bus bearing registration No.AP 10Z 5012 came from behind and hit their bicycle, due to which, the petitioner sustained fracture of right leg and multiple injuries all over his person. The concerned police registered

a crime against the driver of bus. The petitioner claims that he was earning Rs.130/- to Rs.140/- daily, amounting to Rs.4,000/- per month by selling readymade watches on foot-path and, therefore, sought the aforementioned compensation.

5. By filing counter, the respondents opposed the claim. Contending that the petitioner lost control, as the pillion rider jumped from the bicycle, and fell down on the road, and that the bus never came into contact with the bicycle of the petitioner and, as such, the question of liability of respondents does not arise, sought to dismiss the claim.

6 . Based on the pleadings, the Tribunal framed three issues about the responsibility for the accident. During inquiry before the Tribunal, the petitioner besides examining himself as PW.1 has examined one Jabeer Ali as PW.2, and Dr. D.V. Prasad as PW.3, and marked Exs.A-1 to A-16 in order to substantiate his claim. On behalf of the respondents, no witnesses were examined and no documents were filed.

7. The Tribunal on appreciation of evidence let in by the petitioner, both, oral and documentary, held issue No.1 in favour of the petitioner, observing that the accident had occurred only due to rash and negligent driving of the driver of bus. On issue No.2, basing on the evidence of PW.3, then working as Orthopaedic Surgeon in Osmania General Hospital, Hyderabad and the documentary evidence through Exs.A-4 to A-16, as against 30% partial permanent disability assessed by PW.3, restricted it to 10%; taking the notional income at Rs.15,000/- per year for want of definite proof as to the petitioner earning Rs.4,000/- per month arrived at Rs.25,500/- towards loss of future earning capacity. The Tribunal also granted Rs.2,000/- towards transport and extra nourishment charges, besides granting Rs.30,000/- towards medical expenses and Rs.7,500/- towards temporary loss of earnings for six months and thus, a total amount of Rs.65,000/- was granted as compensation with interest at 7.5% per annum thereon.

8 . Dissatisfied with the compensation awarded by the Tribunal, the instant appeal is preferred contending in the grounds that the Tribunal went wrong in arriving the notional income at Rs.15,000/- per annum, which was prescribed for a non-earning person in the Second Schedule to Section 163-A of the Act. It is also stated that the Tribunal ought not to have restricted the disability to 10% as against 30% which was assessed by PW.3, who treated the petitioner, despite the evidence of PW.3 proving shortening of right leg by 1 cm. with restricted range of movements of right ankle and right knee joints. It is also stated that the past loss of earnings from the date of accident till the date of trial for a period of 48 months ought to have awarded instead of awarding the amount for a period of six months and, therefore, sought to grant the balance amount.

9. Heard Sri M. Jameel Ahmed Ansari, learned counsel for the appellant – petitioner, and Sri N. Vasudeva Reddy, learned Standing Counsel for APSRTC.

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10. It is the submission of learned counsel for the appellant - petitioner that the petitioner was a skilled person as he was not only conducting business by selling the watches on foot path in a busy locality, but also repairing them and, therefore, the Tribunal was not right in taking the notional income at Rs.15,000/- per annum which was prescribed for a non-earning person. He has also placed reliance on a number of decisions of the Hon'ble Supreme Court as well as High Courts touching the aspect of assessment of income where no documentary evidence is forthcoming.

i) The decisions on which reliance was placed by the learned counsel for the appellant are;

(a) In **Laxmi Devi and others v. Mohammad Tabbar and another**, where the deceased was 35 years old on the date of accident and as against the plea of his legal heirs that the deceased was earning Rs.140/- per day, the

Tribunal took the notional income at Rs.15,000/- per annum and assessed the dependency. The High Court observing that the notional income of Rs.15,000/- was prescribed in 1994 and the accident has taken place in 2004, and that an unskilled labourer can easily earn Rs.100/- per day, assessed the income at Rs.36,000/- per annum and the dependency at Rs.24,000/- per annum and applying multiplier '12', allowed Rs.2,97,000/- which was upheld by the Hon'ble Supreme Court.

(b) In **Santosh Devi v. National Insurance Co.Ltd. and others**, the Hon'ble Supreme Court held that 30% rise has to be applied for calculation of compensation towards future prospects when a person becomes victim of accident. The Hon'ble Apex Court was dealing with a case where the legal heirs of the deceased sought compensation.

(c) In **P. Venkatesh @ Venkatesham v. V. Venkat Ratnam and another**, for the proposition that the Tribunal has to compute the compensation basing on multiplier method considering disability certificate and also evidence of Orthopaedic Surgeon, who is competent to speak about disability.

(d) In **Laxman @ Laxman Mourya v. Divisional Manager, Oriental Insurance Co.Ltd. and another**, where carpenter sustained 38% towards partial permanent disability, a total compensation of Rs.8,37,640/- was awarded taking Rs.5,000/- as monthly income basing on the evidence available therein.

(e) In **Michael v. Regional Manager, Oriental Insurance Co.Ltd. and another**, where there was shortening of right leg by 1 cm., the injured boy aged 8 years, studying III Standard, suffered permanent disablement of 16% with reference to the whole body. When the Tribunal awarded Rs.77,000/-, the same was enhanced to Rs.1,00,000/- by the High Court and the Hon'ble Supreme Court by observing that the claimant will have to suffer with disability and mental agony for life and his aspirations have been demolished, allowed Rs.2,80,000/- for pain and suffering and permanent

disability; Rs.20,000/- towards medical expenses, conveyance, nourishing diet and attendant charges; Rs.1,00,000/- towards loss of amenities and, thus, enhanced the compensation from Rs.1,00,000/- to Rs.4,00,000/-.

(f) In **Subulaxmi v. M.D., Tamil Nadu State Transport Corporation and another**, the Hon'ble Supreme Court held that the permanent disability and loss of future earning to be treated as two distinct heads as while one relates to impairment of person's capacity, the other relates to sphere of pain and suffering and loss of enjoyment of life by a person. The fact-situation therein would show that the claimant aged 30 years, lost both legs in accident. The permanent disability was assessed at 86% and loss of future earning computed at Rs.15,480/- per annum and applied relevant multiplier and awarded compensation.

(g) In **S. Manickam v. Metropolitan Transport Corporation Ltd.**, where the claimant suffered amputation of right leg below knee and severe injuries on head, right hand and chest, when the Tribunal assessed income at Rs.8,000/- per month, and adopting multiplier '13', arrived at Rs.9,42,822/- inclusive of Rs.1,00,000/- for permanent disablement, the High Court disallowed Rs.1,00,000/- towards permanent disability and adopting multiplier '10', reduced to Rs.6,72,822/-, but the Hon'ble Supreme Court restored the said amount of Rs.1,00,000/- for permanent disability and applying multiplier '13', enhanced the award from Rs.6,72,822/- to Rs.8,52,822/-.

(h) In **Neeta and others v. Divisional Manager, Maharashtra State Road Transport Corporation**, where the deceased was aged 33 years and carpenter by profession, besides having income from agricultural land, and though, no documentary evidence about his income was placed, the Tribunal assessed the income at Rs.4,500/- per month which was increased to Rs.6,000/- in the appeal and the Hon'ble Supreme Court further increased to Rs.12,000/- per month taking into account the prevailing agricultural income and future prospects.

11. Turning to the fact situation occurring in the instant case, no doubt, there is no documentary evidence to prove that the petitioner was earning

Rs.4,000/- per month. But, however, his income can be taken at Rs.100/- per day and Rs.3,000/- per month and Rs.36,000/- per annum.

12. Concerning partial permanent disability, PW.3, who is an Orthopaedic Surgeon in Osmania General Hospital, Hyderabad, who treated the petitioner, has assessed 30% disability for shortening of right leg of the petitioner by 1 cm. including ankle restriction. But, in a similar situation, the Hon'ble Supreme Court in **Michael's case** (Supra 5) relied on by the learned counsel, taken the disablement of 16% where the right leg of the boy was shortened by 1 cm, keeping in view, the age of boy and the mental agony for life and his aspirations have been demolished, granted the amount mentioned therein. In this case, the petitioner is not an young boy, but aged 33 years and, keeping in view, the decision in **Michael's Case** (Supra 5) percentage of disability is taken at 16% as against 10% treated by the Tribunal and 30% assessed by PW.3. In such an event, loss of earning capacity at 16% works out to Rs.5,760/- per annum [i.e., Rs.36,000/- p.a. x 16/100]. When multiplier '16' is applied to the same, since the petitioner was 33 years old on the date of accident, the loss of earning capacity works out to Rs.92,160/- [Rs.5,760/- x 16] as against the amount of Rs.25,500/- granted by the Tribunal. Accordingly, the said amount is granted basing on the evidence of PW.3.

13. The amount of Rs.30,000/- towards medical expenses granted by the Tribunal is concerned, the same is not disturbed. The amount of Rs.7,500/- granted by the Tribunal towards loss of temporary earnings for a period of six months, the same is enhanced to Rs.18,000/- [Rs.3,000/- x 6]. The amount of Rs.2,000/- granted by the Tribunal towards transportation charges is also not disturbed. The Tribunal has not granted any amount towards extra nourishment. Therefore, a sum of Rs.5,000/- is granted. Thus, in all, the petitioner is entitled to Rs.1,47,160/- as compensation as against the amount of Rs.65,000/- granted by the Tribunal. Concerning interest, the Tribunal has granted it at 7.5% per annum and the same is maintained on the entire amount of Rs.1,47,160/- as per the decision of the Apex Court in **Rajesh and others v. Rajbir Singh and others**.

14. In the result, the appeal is allowed in part and the order and decree, dated 05-12-2005, in O.P. No.1864 of 2003, passed by the Tribunal are modified, enhancing the compensation to Rs.1,47,160/- (Rupees one lakh forty seven thousand one hundred and sixty) from Rs.65,000/-(Rupees sixty five thousand) with interest thereon at 7.5% per annum 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

April 08, 2015.

Mgr