HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A. No.833 OF 2009

JUDGMENT:

This appeal is filed by the second respondent – insurance company challenging the judgment and award dated 04.04.2008 passed in O.P. No.1424 of 2004 on the file of the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Nizamabad, wherein and whereby the Tribunal while awarding an amount of Rs.8,,21,000/- towards compensation to the petitioner as against the claim of Rs.10,00,000/- fastened the liability on the insurance company.

2. The parties hereinafter will be referred to as they are arrayed before the Tribunal to avoid confusion.

3. The facts leading to filing of the present petition are briefly as follows: On 12.2.2003, the petitioner along with one Gangadhar was proceeding to Nizamabad from Sarangapoor Hanuman Temple on a cycle. When they reached Sarangapoor dairy farm, the driver of auto bearing No.AP 25U 1776 had driven the same in a rash and negligent manner and hit the cycle of the petitioner. The auto ran over the left leg of the petitioner. The Station House Officer, Nizamabad Rural Police Station registered a case in Crime No.33 of 2003 against the driver of the auto. Due to the accident, the petitioner sustained injuries on various parts of the body and took treatment as inpatient in Shashank Hospital, Nizamabad from 12.2.2003 to 23.2.2003 and underwent two major operations. The left leg of the petitioner was amputated above the knee. The petitioner spent huge amount towards medicines and treatment. By the time of the accident, the petitioner was aged 25 years and used to earn Rs.15,000/- per month as vegetable vendor. Due to the amputation of left leg, the petitioner lost earning capacity. The auto bearing No.AP 25U 1776, which belongs to the first respondent, was insured with second respondent with effect from 14.3.2002 to

13.3.2003. Hence, the petition was filed under Section 166 of the Motor Vehicles Act claiming compensation of Rs.10,00,000/- from the respondent Nos.1 and 2 jointly and severally with interest and costs.

4. The first respondent remained ex parte. The second respondent filed counter denying all the material averments made in the petition inter alia contending that the driver of the auto was not having valid and effective driving licence as on the date of the accident and therefore, the second respondent is not liable to pay compensation to the petitioner. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

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

1) Whether the pleaded accident was occurred on 12.02.2003 due to rash and negligent driving of auto bearing No.AP 25U 1776 by its driver as per Section 166 of M.V.Act?
2) Whether the petitioner is entitled for compensation, if so, to what amount and from whom?
3) To what relief?

6. During the course of trial, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A1 to A9 were marked. On behalf of the second respondent, no oral evidence was adduced but Ex.B1 was marked.

7. On appraising the oral and documentary evidence 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 auto bearing No.AP 25U 1776 and allowed the petition in part by awarding compensation of Rs.8,21,000/- with proportionate costs and interest at the rate of 7.5% per annum from the date of petition till the date of payment, directing the respondent Nos.1 and 2 to pay the amount

within one month from the date of the award. Feeling aggrieved by the judgment and award, the second respondent – insurance company preferred the appeal.

8. Sri Naresh Byrapaneni, learned counsel for the appellant-insurance company submitted that the Tribunal awarded compensation under the two heads i.e., loss of earning capacity and loss of future earnings, which is not permissible under law. He further submitted that the quantum of compensation awarded by the Tribunal is on higher side. **Per contra**, Sri Lakkadi Dayakar Reddy, learned counsel for the claimant submitted that the quantum of compensation awarded by the Tribunal is just and reasonable and there are no grounds to interfere with the same.

9. Now, the points that arise for consideration in this appeal are:

> *(1) Whether the Tribunal has committed any error in awarding compensation under loss of earning capacity as well as loss of future earnings?*
>
> *(2) Whether the Tribunal has awarded just and reasonable compensation to the petitioners or not?*

<u>POINT NOs.1 and 2</u>:

10. Both the points are interlinked with each other. Hence I am inclined to address both the points simultaneously in order to avoid repetition.

11. There is no dispute between the parties with regard to the manner of accident and the factum of sustaining injuries by the petitioner. I am fully agreeing with the finding recorded by the Tribunal on issue No.1 that the accident occurred due to the rash and negligent driving of the driver of the auto bearing No.AP 25U 1776.

12. Learned counsel for the claimant has drawn my attention to the

decisions of Hon'ble Apex Court in **Raj Kumar v Ajay Kumar**[1] and **Rajesh v Rajbir Singh**[2]. These two decisions deal with awarding of compensation in injury cases. Let me consider the facts of the case on hand in the light of the principles enunciated in the cases cited supra. The oral testimony of P.Ws.1 and 2 coupled with Exs.A5 and A6, Discharge summary and Disability certificate respectively, reveals that the petitioner's left leg was amputated above the knee. The recitals of Ex.A6 clearly reveal that the petitioner incurred 80% functional disability due to amputation of left leg.

13. Except the self-served testimony of P.W.1, there is no other convincing evidence to establish that by the time of accident, the petitioner was earning Rs.15,000/- per month as vegetable and fruit vendor. It is not uncommon to show higher income as income of the injured/deceased to obtain more compensation from the Tribunal. In the absence of documentary evidence, some guess work is to be made in order to ascertain the income of the petitioner. Basing on the material available on record, the Tribunal arrived at just and reasonable conclusion that the petitioner may earn Rs.4,500/- per month. However, the Tribunal committed error in deducting $1/3^{rd}$ of the income towards personal expenses of the petitioner-injured. So far as the injury cases are concerned, deduction of amount towards personal expenses of the injured is not permissible under law.

14. The oral testimony of P.W.2-Doctor supported by Ex.A6 Disability certificate issued by the Medical Board, Nizamabad, reveals that the petitioner sustained 80% permanent disability due to amputation of left leg above the knee. By the time of the accident, the petitioner was aged about 25 years. The Tribunal rightly determined the appropriate multiplier as '18'. As observed earlier, the Tribunal has committed error only in deducting $1/3^{rd}$ of the income towards personal expenses of the

petitioner. By applying the multiplier '18', taking into consideration the income of the petitioner at Rs.4,500/- per month and permanent disability at 80%, loss of earning capacity would come to (Rs.4,500 X 12 X 18 X 80/100) Rs.7,77,600/-.

15. The Tribunal awarded an amount of Rs.1,00,000/- towards loss of future earnings. It appears that the Tribunal might have awarded Rs.1,00,000/- towards loss of future earnings, under the impression that the loss of future earnings is different from loss of earning capacity. In doing so, the Tribunal failed to understand the basic concepts of awarding compensation in injury cases. The Tribunal or court is empowered to grant compensation under the head 'loss of future amenities'. Due to amputation of left leg, the petitioner may not be in a position to enjoy the life as he was enjoyed prior to the accident. Having regard to the facts and circumstances of the case, I am of the considered view that it is a fit case to wards an amount of Rs.1,00,000/- towards loss of future amenities but not under the head loss of future income.

16. The compensation awarded by the Tribunal under the other heads amounting to Rs.1,02,564/- is fair, just and reasonable and there are no grounds much less valid grounds to interfere with the same. The petitioner is entitled to Rs.10,80,164/-. Unfortunately the petitioner has not filed appeal seeking enhancement of compensation. The difference of compensation is to the tune of Rs.2,59,164/-.

17 As per the decision of the Supreme Court in **Ranjana Prakash v Divisional Manager**[3], in an appeal filed by the insurance company the High Court cannot enhance the compensation without being regular appeal or cross-objections filed by the claimants. However, the High Court can examine and apply the relevant principles in determining the just compensation. Paras-6 and 8 are relevant, which are extracted

hereunder:

> 6. We are of the view that the High Court committed an error in ignoring the contention of the claimants. It is true that the claimants had not challenged the award of the Tribunal on the ground that the Tribunal had failed to take note of the future prospects and add 30% to the annual income of the deceased. But the claimants were not aggrieved by Rs 23,134 being taken as the monthly income. There was therefore no need for them to challenge the award of the Tribunal. But **where in an appeal filed by the owner/insurer, if the High Court proposes to reduce the compensation awarded by the Tribunal, the claimants can certainly defend the quantum of compensation awarded by the Tribunal, by pointing out other errors or omissions in the award, which if taken note of, would show that there was no need to reduce the amount awarded as compensation**. Therefore, in an appeal by the owner/insurer, the appellant can certainly put forth a contention that if 30% is to be deducted from the income for whatsoever reason, 30% should also be added towards future prospects, so that the compensation awarded is not reduced. The fact that the claimants did not independently challenge the award will not therefore come in the way of their defending the compensation awarded, on other grounds. It would only mean that in an appeal by the owner/insurer, the claimants will not be entitled to seek enhancement of the compensation by urging any new ground, in the absence of any cross-appeal or cross-objections.
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> 8. Where an appeal is filed challenging the quantum of compensation, irrespective of who files the appeal, the appropriate course for the High Court is to examine the facts and by applying the relevant principles, determine the just compensation. If the compensation determined by it is higher than the compensation awarded by the Tribunal, the High Court will allow the appeal, if it is by the claimants and dismiss the appeal, if it is by the owner/insurer. Similarly, if the compensation determined by the High Court is lesser than the compensation awarded by the Tribunal, the High Court will dismiss any appeal by the claimants for enhancement, but allow any appeal by the owner/insurer for reduction. The High Court cannot obviously increase the compensation in an appeal by the owner/insurer for reducing the compensation, nor can it reduce the compensation in an appeal by the claimants seeking enhancement of compensation.

17. Having regard to the facts and circumstances of the case and

also the principle enunciated in the case cited supra, I am of the considered view that the quantum of compensation awarded by the Tribunal cannot be interfered with. The points are accordingly answered.

15. In the result, the appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 23.02.2015
Js.

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[1] (2011) 1 SCC 343

[2] (2013) 9 SCC 54

[3] (2011) 14 SCC 639