

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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M.A.C.M.A. No.965 OF 2005

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JUDGMENT:

The petitioner, aggrieved of the order, dated 04-01-2005, in M.V.O.P. No.556 of 1998, passed by the learned Chairman, Motor Accidents Claims Tribunal – cum – District Judge, Kadapa (for short 'the Tribunal'), whereby and whereunder, while determining the compensation at Rs.86,000/-(Rupees eighty six thousand) for the injuries sustained by him, dismissed the claim petition on the ground that the injuries sustained by the petitioner were on account of his own negligence, the instant appeal is preferred.

2. The appellant herein is petitioner in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are driver and owner of RTC bus bearing registration No.AP 9Z 5128, respectively, are respondent Nos.1 and 2 and respondent Nos.3 and 4, who are owner and insurer of lorry bearing registration No.AP 16W 850, respectively, are respondent Nos.3 and 4, 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 21-03-1997, the petitioner, who was working as driver under the employment of the 3rd respondent, was driving a lorry bearing registration

No.AP 16W 850 belonging to the 3rd respondent insured with the

4th respondent and proceeding from Rayalapeta to Palamaneru, and when it reached Gudipalli, an RTC bus bearing registration No.AP 9Z 5128 belonging to

the 2nd respondent driven by the

1st respondent came in opposite direction and both the vehicles were colluded, due to the negligence of the 1st respondent causing injuries to the petitioner. He was shifted to Government Hospital, Palamaneru and from there to District Head-quarters Hospital, Chittoor for better treatment. He states that he got admitted himself in Nirmala Hospital, Kadapa and undergone treatment under Dr. Subramanyam Rao by spending Rs.15,000/-. Despite expert's treatment, he is unable to drive the vehicle and, thus, became permanently disabled. He used to earn Rs.1500/- per month as salary by working as driver and Rs.50/- per day as batta and, therefore, sought to grant a sum of Rs.2,00,000/- as compensation, though, he estimated the damages, both special damages at Rs.25,000/- and general damages at Rs.2,95,000/-.

5. Respondent Nos.1 and 3 remained *ex parte* before the Tribunal.

6. Respondent Nos.2 and 4 have filed separate counters, opposing the claim.

7. Based on the pleadings, the Tribunal framed three issues about the responsibility for the accident. During inquiry, on behalf of petitioner, besides examining himself as PW.1, also examined Dr.B. Ramachandraiah and Dr.S. Subramanya Rao as PWs.2 and 3 and marked Exs.A-1 to A-5. On behalf of the contesting respondents, one Mohd. Shajahan was examined as RW.1, who is the 1st respondent and driver of the RTC bus at the relevant time, and no documents were marked.

8. The Tribunal, on issue No.1, on appraisal of evidence, held it against the petitioner, observing that it was only on account of his own negligence, the accident has occurred. On issue No.2, the Tribunal taking into consideration the salary of petitioner at Rs.1500/- per month, granted a sum of Rs.9,000/- towards loss of temporary earnings for six months; a sum of Rs.50,000/- towards shock, pain, suffering and loss of amenities; and taking into consideration 10% disability and the age of petitioner as 34 years, applied

multiplier '15' and arrived at Rs.27,000/- towards loss of future earning capacity and, thus, arrived at a total sum of Rs.86,000/- as compensation. However, in view of the finding tendered on issue No.1 dismissed the entire claim.

9. It is the aforesaid order which is under challenge in the instant appeal preferred by the petitioner contending in the grounds of appeal that the Tribunal was not right in dismissing the claim petition, as this Court while setting aside the award passed by the Tribunal earlier, remitted the matter to the Tribunal for consideration by giving opportunity to the claimant to examine the doctors, who treated him at the relevant time and only to that extent the Tribunal had to probe into after remittance, but the Tribunal went beyond the scope of the direction given by this Court and dismissed the claim petition on different ground, which is contrary to law. Therefore, while stating that the appellant has spent around Rs.15,000/- towards treatment, attendant charges, special diet etc. and that the Tribunal ought to have applied multiplier '17' instead of '15' sought to grant entire amount.

10. Heard Sri V. Bhaskara Reddy, learned counsel for the appellant – petitioner and Sri A. Rama Rao, learned Standing Counsel for respondent No.2 – APSRTC. No representation for respondent No.4 – Insurance Company. Despite service of notice on respondent Nos.1 and 3, none appears on their behalf.

11. To decide the controversy in the instant appeal, it is absolutely indispensable to refer to the direction given by this Court while disposing of appeal in C.M.A. No.204 of 2001, dated 22-10-2003. The relevant observations are contained in paragraph Nos.2 and 3. In order to look at the scope within which the Tribunal after remittance had to probe into, it would be apt to extract the said direction which is thus:

“3. Hence, the award of the tribunal below is set aside and the matter is remanded back to the Tribunal for fresh consideration by giving an opportunity to the claimant to examine the Doctors who treated him at the relevant point of time i.e. at the time of accident, the Civil Surgeon or his

Assistant Surgeon in the Government Hospital. Since the accident took place in the year 1997, the Tribunal below shall dispose of the O.P. within a period of 3 (three) months from the date of receipt of copy of this order.”

Thus, the above direction makes it abundantly clear that the Tribunal had to confine itself to the extent of affording opportunity to the petitioner to examine the medical officers and to dispose of the original petition in the light of medical evidence as regards permanent disability set up by the petitioner.

12. The learned counsel for the appellant strongly opposed the approach of the Tribunal in dismissing the petition by taking issue No.1 afresh, despite the fact that earlier the very same Tribunal held issue No.1 in affirmative, and probing into that issue by the Tribunal after remittance is beyond the scope of direction given by this Court.

13. A perusal of direction given by this Court, as extracted in the above, would reflect that the Tribunal was directed to confine to afford a chance to the petitioner to examine the doctors and to determine the compensation in the light of medical evidence. Therefore, there is sufficient force in the submission made by the learned counsel for the appellant. Hence, the finding tendered on issue No.1 by the Tribunal is hereby set aside.

14. The next aspect that requires consideration is, whether the compensation determined by the Tribunal can be sustained?

15. Perused the order and the evidence on record. The Tribunal while discussing the evidence of PW.3 found that PW.3 operated the fractures sustained by the petitioner and later it was found united, but there was limitation of movement of right ankle and to subtalar joint and, the petitioner was, therefore, not able to squat properly and walking with limping and, thus, assessed the permanent disability at 10%. It is reflected from the evidence of

PW.3 and from the finding recorded by the Tribunal that, though, PW.3 was cross-examined by the learned counsel for the Insurance Company, except making a suggestion that the petitioner did not sustain any permanent disability, which was denied by him, nothing-else was brought out in his cross-examination to assist its stand.

16. During the course of arguments, the learned Standing Counsel for APSRTC placed reliance on a decision of the Hon'ble Supreme Court in **National Insurance Co.Ltd., v. Mubasir Ahmed and another**. In the said case, the High Court without indicating any reason or basis held that there was 100% loss of earning capacity and the Hon'ble Supreme Court found fault with such conclusion, as the said disability arrived by the High Court was without any basis. As seen from the facts, functional disability and loss of earning capacity assessed by the Medical Officer was ranging between 65% and 80% in three Civil Appeals mentioned therein, whereas the High Court has taken the disability at 100% accounting it towards loss of earning capacity and awarded compensation. The Hon'ble Supreme Court while setting aside the judgment of the High Court, restored the order of the Commissioner by referring to the provisions of Section - 4 and 4-A of the Workmen's Compensation Act, 1923, where a) death results from the injury; b) permanent total disablement results from the injury; c) permanent partial disablement results from the injury; and d) temporary disablement, whether total or partial results from the injury, was discussed with reference to percentage of wages to be considered, as mentioned in other column in the said paragraph. In the instant case, the medical officer's evidence (PW.3) is clear that the disability arrived by him at 10% was in view of the restriction of movement of right ankle and subtalar joint which resulted in PW.1 was disabled to squat properly and walk with limping. Therefore, the decision relied on by the learned counsel would not assist the case of Corporation.

17. Thus, the finding recorded by the Tribunal accepting 10% disability, as spoken to by PW.3, can not be faulted with. Therefore, the amount of Rs.86,000/- determined by the Tribunal which consists of Rs.27,000/- towards loss of future earning capacity; Rs.50,000/- towards shock, pain, suffering and

loss of amenities; and Rs.9,000/-towards loss of temporary earnings for a period of six months, has to be maintained, as it is well-reasoned and well appreciated without giving rise to any legal infirmity. Hence, the order of the Tribunal to the extent of dismissing the claim against APSRTC is hereby set aside. So far as respondent Nos.1, 3 and 4 are concerned, the Tribunal dismissed the claim petition against them originally i.e., prior to remittance. Even, the compensation of Rs.86,000/- determined by the Tribunal after remittance is hereby confirmed. However, interest at 7.5% per annum thereon is granted as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others.**

18. In the result, the appeal is allowed in part. There shall be no order as to costs.

19. As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

March 17, 2015.

Mgr

