

THE HON'BLE SRI JUSTICE S.V.BHATT

M.A.C.M.A.NO.1815 OF 2005

JUDGMENT:

Heard Sri. B.Siva Kesava Reddy, learned counsel appearing for the appellant and Sri V.Srinivasa Rao, learned standing counsel appearing for the 2nd respondent.

2. This appeal is directed against the award, dated 25-09-2004 in M.V.O.P.No.948 of 2002 on the file of the IV Additional District Judge-cum-Chairman, Motor Accident Claims Tribunal, Kurnool (for short 'the Tribunal'). Through the impugned award, the Tribunal, granted compensation of Rs.44,033/- as against Rs.1,00,000/- claimed by the appellant. The appeal is one for enhancement of compensation.

3. The case of the appellant and respondent/Insurance Company is as follows:

The appellant on 31-05-2002 at about 10 A.M. along with two others boarded auto bearing No. AP 21T-9593 at Kodumur village to go to Midthur village. Due to rash and negligent driving of the Auto Driver, when the journey was 3 K.Ms away from Midthur village, the auto turned turtle and all the passengers suffered injuries. One of the inmates succumbed to injuries at the spot. The appellant suffered grievous injuries. The appellant was shifted to Government General Hospital, Kurnool and was treated as inmate for a few days. The appellant claims to be a Hamali earning about Rs.100/- per day. The appellant claimed a sum of Rs.1,00,000/- as compensation towards injuries suffered by the appellant, resultant loss of income, pain and suffering, Medical and incidental expenses incurred by him.

4. The 2nd respondent primarily contested the entitlement to

claim compensation and also the claims made under various heads.

5. The Tribunal framed the following issues for enquiry:

1. Whether the accident occurred on 31-05-2002 was due to rash and negligent driving of driver of auto bearing No.AP-21T-9593 belonging to first respondent?

2. Whether the petitioner is entitled to claim compensation, if so, to what amount and from which of the respondent?

6. While considering the quantum of compensation payable to the appellant, the Tribunal in paras 10 and 12 of the common order impugned in the appeal, recorded the following observations/findings.

“Admittedly, P.W.1 was Hamali. He claims in his evidence that he is earning Rs.100/- per day by doing Hamali work, but no iota of evidence is filed by him to prove his income. In case of P.Eswari Balarajaiah & others V Md. Riyas and another 22003 (3) Law Summary 55 (D.B.), wherein the Division Bench of our Honourable High Court pleased to hold that an unskilled labour is entitled to wages of Rs.50/- per day under Minimum Wages Act. Accordingly, the earning capacity of the petitioner is assessed at Rs.1500/- per month. The monthly loss of income of the petitioner is worked out to Rs.225/-.

P.W.1 filed the medical bills to a tune of Rs.13,542/-. The learned counsel for the second respondent contended that some of the medical bills does not contain the seal and signature of the proprietor of the concerned Medical Stores, but some of the bills contain the signature of the proprietor of the concerned medical stores. Since plates and screws are fixed in the left thigh of P.W.1 and fact that he has purchased the screws and plates from Swaroop Medicals worth Rs.3,750/- so, the petitioner is entitled to Rs.5000/- towards medical expenses. Thus, P.w.1 is entitled to total compensation of Rs.44,033/- under all heads.”

Hence, the appeal.

7. Learned counsel appearing for the appellant contends that the consideration of Tribunal for grant of compensation under pecuniary loss, determination of monthly earning of the appellant is completely illegal and contrary to the decision reported in **RAMACHANDRAPPA V MANAGER, ROYAL SUNDARAM ALLIANCE INSURANCE CO. LTD.**,^[1]. The relevant para reads thus:

“The appellant, insofar as disability caused due to accident is concerned, had stated in his evidence that he had sustained severe

bodily injuries which have resulted in permanent partial disability, which would affect his future earning capacity as coolie. The doctor, who was examined as claimant's witness, has stated that the appellant has sustained malunited fracture 2nd, 3rd, 4th, 5th MCB right and malunited fracture scapula right and in his opinion, appellant has suffered permanent physical disability of 41 per cent to right upper limb and in view of the disability, the claimant cannot work as a coolie and cannot do any other manual work as a coolie. The Tribunal while assessing the loss of income has taken the disability to the whole body as 1/3rd of particular limb and has assessed the loss of income at 1/3rd of 41 per cent which comes to about 13.5 per cent. So the loss of income was taken at 13.5 percent. So the loss of income was taken at 13.5 per cent of Rs.3,000/- and the loss of future income has been quantified at Rs.72,900/-. We cannot accept this quantification arrived at by the Tribunal, since the assessment of compensation under the head of loss of earning capacity is calculated abysmally on the lower side. On the question of disability caused due to the accident, the doctor, who has been examined as claimant's witness, says that because of the injury sustained by the claimant, he cannot work as a coolie and cannot do any other manual work. This part of the evidence is not contravened by the insurance company by subjecting the claimant to cross-examination. Therefore, we can safely conclude that claimant has become permanently disabled and, therefore, has lost the future earning capacity permanently. Claimant has also suffered prolonged medical treatment and hospitalisation. Looking to the amount awarded by the Tribunal, we are of the view that the same is too less and, therefore, we are inclined to enhance the same. Taking into consideration the future economic loss he would suffer because of permanent partial disability, which would not permit him to work as a coolie or do any other job, the medical expenses incurred, pain and suffering, loss of income during treatment, period of loss of future amenities and discomfort, in our view, interest of justice will be served if an additional amount of Rs.2,00,000/- (Rupees two lakh) is granted to the appellant by way of compensation."

He further contends that the monthly income determined by the Tribunal is replaced with the amount accepted as probable and reasonable income of an un-employee by the apex Court in the decision referred to above, for loss of future income at Rs.4,500/- X 30/100 = 1350 X 12 X 16 = Rs.2,59,200/-. According to the learned counsel for the appellant, the appellant did not work for 20 months due to the injuries suffered by him and he should be compensated with a sum of Rs.16,200/- and finally towards medical expenses incurred by the appellant, the appellant claims a sum of Rs.13,542/-. The total compensation claimed in the appeal works out at Rs.2,88,942/, but

restricts to the amount claimed in the petition.

8. On the other hand, learned standing counsel appearing for the 2nd respondent contends that the calculations now relied upon by the appellant are completely exaggerated and cannot be considered by this Court for any purpose. According to the learned standing counsel, there is hardly any material on anyone of the claims now canvassed in the appeal. Hence, the learned standing counsel prays to dismiss the appeal.

9. Now the point that arise for consideration is:

“Whether the appellant is entitled for enhancement of compensation and if so, what is the just and proper compensation for the injuries suffered by him in the accident occurred on 31-05-2002?”

10. The appellant himself was examined as P.W.1 and he has deposed to the rash and negligent driving which resulted in accident on 31-05-2002, and brought on record Exs.A12 and A15. I have perused Ex.A15, which shows that the appellant suffered the following injury namely swelling of (L) thigh, X ray report of Dr.Vahida Begum, Radiologist, GGH, Kurnool, MLC NO.1713/31-05-02, X ray (L) thigh, femur seen and was hospitalised from 31-05-2002 to 17-07-2002. The appellant was hospitalised nearly seven weeks. The Tribunal had committed an error in arriving at the monthly income of the appellant at Rs.900/- and 25% of it as Rs.225/- and awarded compensation. By taking into consideration the view expressed by the apex Court, the said determination is erroneous and assuming that the appellant was working as Hamali, still the probable income the appellant would be earning is Rs.4,000/- per month. The appellant could not and did not examine the Doctor or placed evidence on percentage of disability suffered by the appellant. In spite of these circumstances, from the material available on record, this Court can

consider the just and proper compensation payable to the appellant. The appellant was treated as inpatient in Government General Hospital, Kurnool, from 31-05-2002 to 17-07-2002 and certainly it can be expected that the pain, suffering and loss of income would have certainly extended beyond the date of discharge. Therefore, the appellant is entitled to under the heads of pain and suffering Rs.10,000/-, for injuries Rs.10,000/-, loss of income at Rs.3,000/- per month for one year i.e., Rs.36,000/-, extra nourishment, Medical and Travelling expenses Rs.19,500/-. Thus the just and proper compensation payable by the 2nd respondent to the appellant is works out to Rs.75,500/- with interest at 7.5% p.a. on the enhanced compensation from the date of petition till the date of deposit.

11. Accordingly, the appeal is allowed in part enhancing the compensation at Rs.75,500/- with interest at 7.5% p.a. on the enhanced compensation from the date of petition till the date of deposit. No costs. Miscellaneous petitions, if any pending in this appeal shall stand closed.

S.V.BHATT, J

DATED: 07-11-2015

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[\[1\]](#) 2011 ACJ 2436