

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

M.A.C.M.A. No.3071 OF 2005

JUDGMENT:

Feeling aggrieved that the amount of Rs.76,000/- granted towards compensation for the injuries sustained by the petitioner is inadequate, the petitioner – appellant preferred the instant appeal against the order, dated 25-08-2005, in M.V.O.P. No.120 of 2001 on the file of Chairman, Motor Accidents Claims Tribunal – cum – IV Additional District Judge, East Godavari District at Kakinada, seeking enhancement.

2. The appellant herein is the petitioner in M.V.O.P. before the Tribunal, while respondent Nos.1 to 3 herein, who are driver, owner and insurer of Lorry Tipper bearing registration No.AP 9U 6088, respectively, are Respondent Nos.1 to 3 as such.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the M.V.O.P. before the Tribunal.

4. The facts, in brief, are that, on 21/22-04-2000 at about 12.30 a.m., the petitioner, who was aged 19 years, while he was returning on his bicycle, a lorry tipper bearing registration No.AP 9U 6088 proceeding towards Yanam from P. Mallavaram driven by its driver at high speed in a rash and negligent manner, hit him at P. Mallavaram Centre, due to which, he fell down and sustained grievous injuries.

i) Concerning the said accident, a case was also registered in Crime No.34 of 2000 under Section 304-A and 337 IPC.

ii) Contending that he was earning Rs.100/- per day as Coolie, sought a sum of Rs.2,50,000/- as compensation against respondent Nos.1 to 3, who are driver, owner and insurer of the lorry tipper, respectively.

5. Respondent No.2, owner of the vehicle, remained *ex parte*.

6. Respondent Nos.1 and 3 have filed separate counters, denying various allegations leveled by the petitioner, pleaded to dismiss the claim petition against them. Respondent No.3 has also reserved its right to raise defences at an appropriate time under the relevant provisions of the Motor Vehicles Act.

7. The Tribunal has framed three issues about the responsibility for the accident.

8. During inquiry, the petitioner, besides examining himself as PW.1, has examined one Dr.Y. Venkateswara Rao, Professor in Orthopaedics of Rangaraya Medical College, Kakinada, as PW.2 and exhibited Exs.A-1 to A-5, besides exhibiting Ex.X-1 – case sheet with X-ray through the evidence of PW.2. No witnesses were examined on behalf of respondent Nos.1 and 3, and no documents were filed.

9. On appraisal of evidence on record, the Tribunal held issue No.1 in favour of the petitioner. On issue No.2, accepting the disability at 55%, feeling that granting Rs.55,000/- would be just and reasonable for non-functioning of right hand, granted the same. Besides the same, the Tribunal has also granted Rs.5,000/- to each grievous injury and for three grievous injuries, a sum of Rs.15,000/- and for a simple injury a sum of Rs.1,000/-

as provided in the Schedule –II to Section 163-A of the Act. Besides the same, the Tribunal has also granted Rs.5,000/- towards pain and suffering and mental agony. Thus, a total sum of Rs.76,000/- was granted by the Tribunal towards compensation with interest at 6% per annum thereon.

10. It is the aforesaid order which is under challenge in the instant appeal seeking enhancement contending in the grounds that the Tribunal has not properly appreciated the evidence as despite there being positive evidence that the petitioner was working in Devi Hatcheries and Sea Foods, earning Rs.150/- to Rs.200/- per day, and his earnings were drastically affected due to the injuries sustained by him, still, the Tribunal granted meager compensation without even considering the future prospects of the petitioner being affected and, therefore, sought to grant balance amount.

11. Heard Sri D.V. Chalapathi Rao, learned counsel for the appellant – petitioner and Sri Narsi Reddy Teegala, learned Standing Counsel for respondent No.3 – Insurance Company. The appeal against respondent No.1 was dismissed for default by order, dated 05-01-2012, and the same would not make any difference in deciding the matter in issue. Though served notice on respondent No.2, none appears.

12. Perused the order and the evidence on record, both, oral and documentary.

13. Since the request in the instant appeal is for enhancement of compensation, the finding recorded by the

Tribunal on issue No.1 is of any importance as the Insurance Company has not preferred any appeal.

14. Concerning the determination of compensation, it is to be seen whether the appellant is entitled to any enhancement. The Tribunal has recorded that the petitioner sustained three grievous injuries and one simple injury. He was admitted in Rangaraya Medical College, Kakinada on 22-04-2000 and was discharged on 20-05-2000 basing on the evidence of PW.2, who was one of the professors in Orthopaedics of that college. Basing on his evidence, the Tribunal has granted Rs.15,000/- towards three grievous injuries @ Rs.5,000/- per grievous injury and Rs.1,000/- for one simple injury. Towards permanent disability at 55% as certified by PW.2, the Tribunal granted Rs.55,000/-; and for pain and suffering and mental agony, a sum of Rs.5,000/- was granted and thus, making a total of Rs.76,000/- towards compensation.

15. So far as permanent disability is concerned, PW.2's evidence is material. He being one of the members of the Medical Board, his evidence cannot be excluded and his evidence, in fact, proves Ex.A-5, disability certificate, issued by the Medical Board which contains signature of the Chairman. Thus, it shows 55% disability so far as injuries sustained by the petitioner is concerned. A perusal of evidence of PW.2 would show that the right upper limb of the petitioner has been completely paralyzed and it is totally not functioning. Even the observation made by the Tribunal is also occurring in the chief examination recorded by the Tribunal that the right hand of the petitioner was paralyzed and is hanging. Even Ex.X-1, case sheet, testifies the same. PW.2 is emphatic that the petitioner cannot do any work with his right hand. That has been the evidence deposed by PW.2. When his

cross-examination is perused, except suggesting to him that the disability assessed is excessive, which was completely denied by him, nothing-else is brought out in his cross-examination to disbelieve his evidence or discard Ex.A-5. That has been the evidence of the Medical Officer, who treated the petitioner and certified 55% disability, and when the upper right limb is totally dysfunctional and the petitioner was 18 years old as on the date of issuance of Ex.A-5, which also contains the photograph of the petitioner as to his identity when he appeared before the Medical Board showing that his right upper limb is not intact.

16. Admittedly, the petitioner was not an earning member on the date of accident. Though, he claimed that he was doing coolie work and getting Rs.100/- per day, at one stage of his evidence, it is forthcoming that he was prosecuting 10th class. That has been the finding recorded by the Tribunal. The relevant multiplier for the age group of the persons between 15 and 20 years as per the decision of the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**^[1], is '18', and even if the income of non-earning member is taken at Rs.15,000/- per annum as per the Schedule – II to Section 163-A of the Act, the amount that would be worked out would be slightly more than the claim made by the petitioner. Thus, when kept in view, the percentage of disability at '55' and keeping in view, that throughout rest of his life he has to suffer with such disfiguration, besides great inconvenience which he has to undergo having suffered injury at his prime youth, the amount claimed by him at Rs.2,50,000/- as compensation is just and reasonable and, therefore, the said amount is granted towards all the heads, that

being pain and suffering, loss of future earning capacity, extra nourishment, transport charges and attendant charges. Thus, the petitioner is totally entitled to Rs.2,50,000/- and accordingly, the same is granted. The Tribunal has granted interest at the rate of 6% per annum, but in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**^[2], the petitioner is entitled to 7.5% per annum and accordingly the same is granted on the total compensation amount.

17. In the result, the appeal is allowed, and the order and decree, dated 25-08-2005, in M.V.O.P. No.120 of 2001, passed by the Tribunal, are modified, enhancing the compensation to Rs.2,50,000/- (Rupees two lakhs and fifty thousand) from Rs.76,000/- (Rupees seventy six thousand) with interest at the rate of 7.5% per annum thereon from the date of petition till realization. There shall be no order as to costs.

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

A. SHANKAR NARAYANA, J

December 23, 2015.

Mgr

^[1] . (2009) 6 Supreme Court Cases 121

^[2] 2013ACJ1403 = 2013(4)ALT35