

HON'BLE SMT JUSTICE ANIS

M.A.C.M.A.No.843 of 2005

J U D G M E N T:

This appeal is filed by the appellant/petitioner under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 16.03.2001, passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-District Judge, Khammam, in O.P.No.416 of 1997, awarding compensation of Rs.3,25,000/-.

2. The appellant/petitioner filed the above O.P under Section 166 of the Act, claiming compensation of Rs.5,00,000/-, on account of the injuries sustained by him in a motor vehicle accident that occurred on 14.12.1996.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4. The brief averments made in the petition are that the petitioner is an I.T.I qualified student having vehicle driving license to drive the lorry. He was working as a driver on the tanker bearing No.AP.31.U.2477. On 13.12.1996, he started from Visakhapatnam to Nizamabad with a load of diesel in the tanker and after crossing Tallada village on 14.12.1996 at 7:00 a.m one Lorry bearing No.AP.9.U.216, driven by respondent No.1 in a rash and negligent manner, came from the opposite direction and hit the tanker, due to which the petitioner sustained a crush injury to his right hand, cut up to the upper level, multiple fractures on right leg and other injuries all over the body. Immediately after the accident, the petitioner was admitted in Government Civil Hospital, Khammam, where he was provided first aid and later, shifted to Osmania General Hospital, Hyderabad, on 16.12.1996. The petitioner undergone two operations and rods were inserted and on 08.02.1997 he was discharged with a direction for further treatment. The petitioner was undergoing treatment in Visakhapatnam and an amount of Rs.1,00,000/- was incurred towards

transportation, medicines, treatment and attendant charges. The petitioner is a young qualified driver and became permanently disabled in his profession and he completely lost his livelihood. After receiving the complaint, police registered the case in Cr.No.126 of 1996 for the offences punishable under Sections 338 & 337 I.P.C against the first respondent. The petitioner stated that due to the injuries, he lost his livelihood as such respondents are jointly and severally liable to pay compensation to him.

5. Before the Tribunal, the respondent Nos.1 & 2 remained *ex parte*.

6. The brief averments made in the counter filed by the third respondent are as follows:

The third respondent put the petitioner to prove the manner of accident, his age and income and specifically stated that due to the rash and negligent driving of the petitioner only the accident occurred. The third respondent denied that the petitioner spent Rs.1,00,000/- towards medical expenses and further, the petition is bad for non-joinder of necessary parties. Further, the claim of compensation is very high and excessive and prayed the Court to dismiss the petition.

7. Basing on the above pleadings, the Tribunal framed three issues and one additional issue. To substantiate the claim, the petitioner got examined himself as PW.1 and got marked Exs.A.1 to A.97 on his behalf. On behalf of the contesting respondent, no oral evidence was adduced, but Ex.B1 Insurance Policy got marked by consent.

8. After considering the oral and documentary evidence, the Tribunal held that the accident was caused due to rash and negligent driving of the first respondent and as such, respondent Nos.1 to 3 are liable to pay compensation to the petitioner and directed the respondents to pay Rs.3,25,000/- along with interest at 9% p.a to the petitioner.

9. Being not satisfied with the award passed by the Tribunal, the petitioner preferred the present appeal.

10. The learned counsel appearing for the appellant/petitioner argued that in the accident, the petitioner lost his right hand and also sustained grievous injury to his right leg; that the petitioner being the driver, cannot drive any vehicle as such he sustained disability of 100%, lost his livelihood and 100% earning capacity; that the Tribunal granted meagre amount towards loss of future income; that the Tribunal erred in deducting 1/3rd of the income towards personal expenses and the said deduction is not relevant to the case of the petitioner and it applies only in case of death; that the petitioner is entitled for full compensation as the disability is 100% and relied upon the case law reported in ***Oriental Insurance Co. Ltd., v. Kashim and another***^[1], wherein it is held by the High Court of Karnataka as follows:

“8. As such though the permanent disability has been assessed at 50% taking into consideration the facts that the first-respondent was driving a heavy goods vehicle and that now he cannot drive that vehicle and thereby he has lost his avocation, the Commissioner has fixed the loss of the earning capacity at 100%. This Court has held in several cases that where a driver is rendered unfit to drive the vehicle, the loss of earning capacity can be fixed at 100% even though the permanent physical disability is not that much. In the circumstances there are no good ground to interfere with the order of the Commissioner.”

and prayed the Court to enhance the compensation to the petitioner.

11. Though notices were served, none appeared on behalf of respondent Nos.1 & 2.

12. On the other hand, the learned counsel appearing for the third respondent argued that the petitioner received grievous injuries; that the percentage of disability was not proved as the petitioner failed to examine the doctors, who conducted operations and who gave treatment in Osmania Government Hospital, Hyderabad, as well as hospital at

Vizag; that the Tribunal after considering all these aspects, granted a just and reasonable compensation; that when the petitioner is relying on the Act, he cannot claim percentage which was mentioned in the Workmen Compensation Act 1923; that in the absence of any documentary evidence, the petitioner is not entitled for enhancement of compensation; that the petitioner has not made out any case and the findings of the Tribunal needs no interference and hence, prayed the Court to dismiss the appeal.

13. Having regard to the submissions made by the learned counsel appearing for both the parties, the points which are to be decided in this appeal are as follows:

1. Whether the compensation awarded by the Tribunal is just and reasonable?
2. Whether the appellant/petitioner is entitled for enhancement of compensation as prayed for?

14. **P O I N T S:** After perusing the oral and documentary evidence, there is no dispute about the fact that the accident occurred due to rash and negligent driving of the driver of Lorry bearing No.AP.9.U.216 driven by the first respondent, in which petitioner sustained grievous injuries.

15. In so far, the quantum of compensation is concerned, PW.1 is the injured stated that in the accident he sustained crush injury to his right hand, head Injury, injury on face, to the chin, left side near eye lid, right leg and initially he was treated in Osmania Government Hospital, Hyderabad, where operation was done and his right hand was amputated and rods were inserted to his right leg. He took treatment as inpatient for two months and on 08.02.1997 he was discharged from the hospital and referred to K.G. Hospital, Visakhapatnam. PW.1 also stated that he was treated as outpatient for one month. Again after one year, operation was conducted for removal of rods and he spent Rs.1,00,000/- towards transport, treatment and extra-nourishment. Therefore, prayed the Court to grant compensation of Rs.5,00,000/-.

16. PW.1 contended that he was earning Rs.3,600/- p.m as salary and he was paid Rs.150/- per day as T.A while on duty. Except his oral testimony, the petitioner has not produced any documentary evidence to show that he was earning Rs.3,600/- p.m and also that his owner was paying Rs.150/- per day as T.A and D.A on duty. The petitioner has not examined his owner to prove the above facts. In the absence of any evidence, the Tribunal rightly fixed the monthly salary of petitioner as Rs.3,000/- p.m i.e., Rs.36,000/- p.a. Further, his age was taken as 28 years. Therefore, the relevant multiplier applicable to the age group of the petitioner as per the II Schedule of the Act is '18'. There is no dispute that while undergoing treatment, his right hand was amputated and there is a fracture to his right leg and he became a disabled person. The petitioner is a driver. Therefore, with a single hand he cannot drive the heavy vehicle. Further, his right leg was also fractured and rods were inserted. It is no doubt that the petitioner has not examined the doctors who treated him in Osmania Government Hospital and also in K.G. Hospital, Visakhapatnam. The petitioner claims disability of 100% and also that he lost 100% earning capacity. On the other hand, the learned counsel for the respondent argued that the petitioner has not produced the evidence of the doctor, therefore the disability of 100% cannot be assessed as the present application was filed under the Act but not under the Workman Compensation Act.

17. The learned counsel for the petitioner argued that the petitioner claims Rs.7,00,000/- as compensation and he requires further medical expenses and petitioner is entitled to amend the claim petition even at the earlier stage and relied upon the case law reported in **Nagappa v.**

Gurudayal Singh and others^[2], wherein it is held as follows:

21. For the reasons discussed above, in our view, under the M.V. Act, there is no restriction that Tribunal/Court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/Court is to award 'Just' compensation which is reasonable on the basis of evidence

produced on record. Further, in such cases there is no question of claim becoming time barred or it cannot be contended that by enhancing the claim there would be change of cause of action. It is also to be stated that as provided under Sub-section (4) to Section [166](#), even report submitted to the Claims Tribunal under Sub-section (6) of Section [158](#) can be treated as an application for compensation under the M.V. Act. If required, in appropriate cases, Court may permit amendment to the Claim Petition.

Though there is no evidence regarding the disability, admittedly, the petitioner lost his right hand and he also received grievous injuries to his right leg and other parts of the body. Therefore, considering the evidence of PW.1 and Ex.A3 medical certificate, I am of the view that the disability sustained by the petitioner can be assessed at 80%. Thus, the petitioner is entitled for Rs.5,18,400/- (Rs.36,000 X 18 X 80/100) towards loss of future income. A perusal of the award passed by the Tribunal shows that the Tribunal rightly awarded to the petitioner Rs.12,072/- towards purchase of medicines, Rs.20,000/- towards travelling and extra nourishment and Rs.8,000/- towards pain and sufferings and therefore, it remain unaltered. Thus, the petitioner is entitled for a total amount of Rs.5,58,472/-.

18. In view of the above discussion, the appeal is partly allowed enhancing the compensation awarded by the Tribunal to the appellant from Rs.3,25,000/- to Rs.5,58,472/- along with interest at 7.5% p.a on the enhanced amount from the date of appeal till the date of realisation in view of the decision reported in ***Sanobanu Nazirbhai Mirza and others v. Ahmedabad Municipal Transport Service***^[3]. No order as to costs.

19. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

ANIS, J

Date: .07.2015

sr

^[1] LAWS(KAR)-1995-11-51 = [1996]86CompCas106(Kar)

[\[2\]](#) (2003) 2 SCC 274

[\[3\]](#) 2013 ACJ 2733