

THE HON'BLE SMT. JUSTICE ANIS

CIVIL MISCELLANEOUS APPEAL No.2780 of 2004

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JUDGMENT:

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 04-11-2003, passed by the I Additional District Judge-cum-Chairman, Motor Accident Claims Tribunal, West Godavari District at Eluru, in M.V.O.P.No.226 of 1999, awarding compensation of Rs.1,06,400/-.

2. The claimant filed the above O.P. under Section 166 of the Act, claiming compensation of Rs.2,00,000/- for the injuries received by the petitioner in a motor vehicle accident.

3. The brief averments made in the petition are that the petitioner is working as Constable in Vigilance Department at Eluru and his monthly salary is Rs.5,600/-. On 12-09-1998, at 6.00 P.M., the petitioner boarded an Ambassador car bearing registration No.AP-5T-7142 at Akividu to go to Eluru along with Head Constable by paying Rs.15/- each towards hire charges. While so, the driver of a lorry proceeded at high speed in opposite direction without observing traffic rules and dashed the car, as a result the petitioner and the Head Constable and the driver of the car received injuries. The accident occurred due to rash and negligent driving of the driver of 1st respondent.

4. The petitioner was shifted to Venkataraya Hospital, Eluru and he took treatment for five days and from there, he was shifted to Uma Hospital, Eluru for better treatment. He underwent operation and rods were inserted in his right thigh. He spent Rs.85,000/- towards medical expenses. Therefore, prayed the Court to award compensation of Rs.2,00,000/-.

5. R1, R2, R4 and R5 were set exparte before the Tribunal.

6. The brief averments made in the written statement filed by the 3rd respondent are that the petitioner is put to strict proof with regard to the manner of accident, his income, treatment etc. It is further stated that R1 has no valid driving licence to drive the lorry and it is a violation of the condition of the policy. Therefore, R3 is not liable to pay compensation. The claim of the petitioner is excessive and exorbitant and prayed the Court to dismiss the petition.

7. The brief averments made in the written statement filed by the 6th respondent are that the petitioner is put to strict proof with regard to the manner of accident, claim etc. and R4 – driver is not responsible for the accident, as such, R6 is not liable to pay compensation and prayed the Court to dismiss the petition.

8. Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim, PWs.1 to 3 were examined and got marked Exs.A.1 to A.11. On behalf of the sixth respondent, RW1

was examined and got marked Exs.B1 and B2. On behalf of the third respondent, no oral evidence was adduced and got marked Ex.B3.

9. Considering the evidence of PW1 and Exs.A1, A3 and A7, the Tribunal held that R-1 driver is responsible for the accident, in which PW1 received injuries and granted compensation of Rs.1,06,400/- along with interest at 9% per annum against R1 to R3 and dismissed the claim against R4 to R6.

10. Not satisfied with the compensation awarded by the Tribunal, the petitioner preferred the present appeal.

11. The learned counsel for the appellant argued that in the accident the petitioner sustained grievous injuries and he became partially disabled and due to the injuries he suffered mental agony, which cannot be compensated in terms of money. It is also argued that the petitioner was sent to Medical Board and Ex.A10 is the Disability Certificate, wherein it was mentioned that the petitioner was suffered 60% disability. The Tribunal without considering that aspect granted a meagre compensation, therefore, prayed the Court to enhance the compensation. Learned counsel for the appellant also placed reliance upon a decision reported in

K. SURESH V. NEW INDIA ASSURANCE CO. LTD., AND ANOTHER^[1], wherein the Hon'ble Apex Court held in paragraph No.24 as follows:

"24. It is worthy noting that the Bench referred to the pecuniary

damages and non-pecuniary damages and opined thus: -

“Pecuniary damages (Special damages)

(i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).”

and prayed the Court to grant pecuniary damages and non-pecuniary damages and enhance the compensation.

12. On the other hand, learned counsel for the respondents contended that the petitioner is working as Vigilance Constable and due to the said injuries he did not suffer any functional disability and further due to the said disability he has not removed from the service or his promotion was overlooked. Therefore, after considering all these aspects, the Tribunal rightly granted compensation to the petitioner and the said findings of the Tribunal need no interference and prayed the Court to dismiss the petition.

13. Having regard to the submissions made by the learned counsel for the appellant, the points that arise for consideration

are:

- 1. Whether the compensation awarded by the Tribunal is just and reasonable?*
- 2. Whether the appellant is entitled for enhancement of compensation?*

14. **Points:**

PW1, who is the injured, stated that he received fracture to his right thigh and an injury to his head, upper lip and on right back. He was kept in Intensive Care Unit for two days in Venkataraya Nursing Home at Eluru. He took treatment as in-patient for five days in the same hospital. After Discharge he admitted in Uma Nursing Home at Eluru. Dr.B. Narasimha Rao, Orthopaedician treated him and he underwent surgery to his right thigh and rod was fixed and he took treatment as in-patient for two months. He took bed rest for nine months and took treatment in Lakshmi Nursing Home, Visakhapatnam under Dr.B.D. Naidu, Orthopaedic Professor. Later, he went to Hyderabad and had check-up in NIMS and for five days, Venkataraya Diagnostic Hospital collected Rs.27,000/- from him and besides the same, he spent Rs.85,000/- towards medical expenses. Due to the injuries, he is unable to do work and he suffered 60% disability. Ex.A10 is the original disability certificate issued by Andhra Medical College, Visakhapatnam and claiming Rs.2,00,000/- as compensation.

15. PW2 – the then Civil Assistant Surgeon, Government Headquarters Hospital, Eluru stated about accused receiving injuries in the accident. PW2 further stated that there was temporary disability, until the rod was removed.

16. PW3 also another Professor of Orthopaedic stated that he examined PW1 on 20-03-1999 and he complained about fracture shaft femur right side with pain on his right leg and medical examination shows that femur is broken and also the nail is broken. He also stated that he conducted operation, removed the broken nails and re-applied the fresh nail. He conducted operation on 22-03-1999 and the patient was discharged on 18-04-1999. PW3 also stated that on 29-08-2001 PW1 was again admitted in his hospital for removal of the nail, as nail got infected and it was removed by operation and PW1 was discharged on 04-10-2001. PW3 also stated that PW1 has also taken treatment for almost two years and observed him and found that he is having limp because of shortage of his leg due to the injuries. In the cross-examination of PW3, he admitted that the petitioner is able to attend his normal duties and to his job without any difficulty. This admission clearly establishes that the petitioner is not suffering any disability but the petitioner may suffer from some difficulty and it will not hamper his duties.

17. The Tribunal after considering the evidence of PW3 – Retired Professor in Orthopaedic held that PW1 is suffering from 60% disability and observed that PW1 has not stated because of his disability either he removed from service or his promotions are overlooked and after considering all these aspects awarded Rs.71,400/- towards loss of future earnings because of disability and also awarded Rs.30,000/- towards medical expenses and Rs.5,000/- towards pain and suffering. Thus, awarded a total amount of compensation of Rs.1,06,400/-.

18. Now, the learned counsel for the appellant argued that the appellant is entitled for pecuniary damages and non-pecuniary damages and also entitled for compensation for future medical expenses etc.

19. Admittedly, the appellant/petitioner is working as Constable and attending his duties. There is no evidence to show that due to disability he lost his future earnings and also lost all amenities. The Tribunal after considering the evidence on record granted Rs.5,000/- towards pain and suffering and Rs.30,000/- towards medical expenses. The burden of proof lies on the petitioner to show that he is entitled for future medical expenses in view of the disability suffered. To prove that fact also the petitioner not produced any evidence that he needs some amount towards future medical expenses.

20. It is no doubt the Tribunal though granted reasonable compensation but not awarded compensation to the petitioner for extra-nourishment, transportation, etc. Admittedly, the petitioner was admitted in various hospitals and by going to those hospitals he must have incurred some amount for transportation and other charges, likewise the petitioner suffered grievous injuries, therefore, some amount must have been spent towards extra-nourishment. Considering the facts and circumstances of the case, the appellant/petitioner is entitled to an amount of Rs.5,000/- towards extra-nourishment and other charges and Rs.3,000/- towards transportation charges. Thus, the petitioner is entitled to total compensation of Rs.1,14,400/- (1,06,400 + 5,000 + 3,000).

21. After considering the evidence of PW1 and Ex.B1 policy issued by R6, which was in force from 05-09-1997 to 04-09-1998 and by the date of accident the policy was not renewed and not in force. Therefore, the Tribunal rightly held respondent Nos.1 to 3 are jointly and severally liable to pay compensation to the appellant. The Tribunal also rightly held that respondent Nos.4 to 6 are not liable to pay compensation and dismissed the petition against them.

22. In the result, the appeal is partly allowed enhancing the compensation granted by the Tribunal from Rs.1,06,400/- to Rs.1,14,400/-. For the enhanced amount of Rs.8,000/-, an interest at 7.5% is awarded in view of the judgment of the Hon'ble Supreme Court in **SARLA VERMA AND OTHERS vs. DELHI TRANSPORT CORPORATION AND ANOTHER**^[2], from the date of appeal till the date of realisation. There shall be no order as to costs.

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

(ANIS, J)

July, 2015

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[\[1\]](#) 2012 ACJ 2694

[\[2\]](#) (2009)6 SCC 121