

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A.NO.142 OF 2013

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988, challenging the judgment and award dated 09.12.2010 passed in O.P.No.154 of 2007 on the file of the Chairman, Motor Vehicle Accidents Claims Tribunal-cum-II Additional District Judge, Karimnagar at Jagtial.

The parties will be referred to as they are arrayed before the Tribunal to avoid confusion.

In spite of posting the matter under the caption "For Orders" on 02.09.2015 and 04.09.2015 and under the caption "For Judgment" on 07.09.2015 and 11.09.2015, none appeared on behalf of the respondents. Hence, I am inclined to dispose of the matter on merits.

The facts, in brief, leading to filing of the present appeal are as follows.

The first respondent engaged the petitioner as a driver on the lorry bearing AP-07-T-5639. On 03.06.2006, the petitioner was proceeding to Korutla from Karimnagar by driving the lorry bearing No.AP-07-T-5639 for unloading of urea at Korutla. When the lorry reached Kondagattu, the left front tyre of the lorry got burst due to which the petitioner lost control over the lorry and dashed against a roadside tree. Due to accident, the petitioner sustained grievous injuries on his right leg. Immediately after the accident, the petitioner was shifted to Government Hospital, Karimnagar, and from there, he was shifted to Chalimeda Ananda Rao Institute of Medical Sciences, Bommakal (CAIMS), wherein the petitioner's right leg was amputated above the knee. By the time of the accident, the petitioner was aged about 25 years and used to earn Rs.3,300/- per month. The Station House Officer, Jagtial Rural Police Station, Karimnagar, registered a case in Crime No.76 of 2006 for the offence under Section 338 of the Indian Penal Code against the petitioner. The lorry bearing No.AP-07-

T-5639, which belongs to the first respondent, was insured with the second respondent with effect from 28.12.2005 to 27.12.2006. Therefore, respondent Nos.1 and 2 are jointly and severally liable to pay compensation to the petitioner.

The first respondent filed counter admitting the manner of the accident and factum of sustaining of injuries by the petitioner *inter alia* contending that the lorry was insured with the second respondent with effect from 28.12.2005 to 27.12.2006, therefore, the second respondent alone is liable to pay compensation, if any, to the petitioner.

The second respondent filed written statement denying all the averments made in the petition including the manner of the accident and the nature of the injuries sustained by the petitioner *inter alia* contending that the accident occurred due to the rash and negligent driving of the lorry by the petitioner; therefore, the petition is not maintainable under law. It is further contended that the second respondent is not liable to pay compensation unless the petitioner was having valid and effective driving license as on the date of the accident. The amount of compensation claimed under various heads is highly excessive and hence, the petition may be dismissed.

Basing on the above pleadings, the Tribunal framed appropriate issues. During the course of trial, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A1 to A52 were marked. On behalf of the respondents, R.Ws.1 and 2 were examined and Exs.B1 and B2 were marked. After analyzing of the evidence available on record, the Tribunal arrived at a conclusion that the accident occurred due to tyre burst and allowed the claim petition in part by awarding Rs.19,000/- towards compensation as against the claim of Rs.5,00,000/-. Feeling aggrieved by the judgment and award of the Tribunal, the claimant filed the present appeal.

The contention of the appellant is four-fold. (1) The Tribunal has not properly appreciated the oral testimony of P.W.1 with reference to documentary evidence. (2) The entire medical record placed before

the Tribunal clinchingly establishes that the right leg of the petitioner was amputated above the knee and that aspect was not considered by the Tribunal in right perspective. (3) Simply because some mistake crept in the chief examination of P.W.1, that itself is not a valid ground to disbelieve the version put forth by the petitioner and (4) The finding recorded by the Tribunal is contrary to the oral and documentary evidence placed before it.

Now, the point that arises for consideration in appeal is as following:

Whether the Tribunal has awarded just and reasonable compensation or not.

Point: As per the finding of the Tribunal, the accident occurred due to burst of tyre and there was no negligence on the part of the driver. The finding recorded by the tribunal on issue No.1 became final in view of non-filing of appeal or cross objections by respondent Nos.1 and 2. The fact remains that the petitioner sustained injuries out of use of motor vehicle i.e., lorry.

As per the testimony of P.W.1, he was proceeding from Karimnagar to Korutla by driving lorry bearing No.AP-07-T-5639. His testimony further reveals that due to burst of the front left tyre, he lost control over the lorry and dashed against a roadside tree. His testimony further reveals that he sustained injury to the left leg and took treatment as inpatient in Government Hospital, Karimnagar and later at CAIMS Hospital, Bommakallu. His left leg was amputated up to thigh. A perusal of Ex.A2, Wound Certificate, reveals that the petitioner sustained fracture to right leg. A perusal of Ex.A4, discharge summary, clearly reveals that the petitioner was admitted in CAIMS Hospital on 03.06.2006 and was discharged on 12.06.2006. A perusal of the same reveals that the petitioner underwent operation on 03.06.2006 and his right leg was amputated above the knee. A perusal of Ex.A5, disability certificate, reveals that the right leg of the petitioner was amputated above the knee. As per the recitals of Ex.A5,

the petitioner incurred 80% functional disability. As per the testimony of P.W.2 also, the petitioner's right leg was amputated above the knee. The material available on record clinchingly establishes that the right leg of the petitioner was amputated above the knee. Simply because he stated in his chief examination that his left leg was amputated, by itself is not a valid ground to discard the testimony of P.W.1. It is for the Tribunal to verify each and every document in order to ascertain the truthfulness or otherwise of the version put forth by the claimants while deciding the petitioners under the motor vehicle accident cases. The Tribunal has to take more care and caution in order to protect the interest of the claimants. Simply because the claimant committed a mistake due to ignorance, that itself is not a valid ground to dismiss the petition.

The relevant point to be considered by the Tribunal is whether the claim of the petitioner is false one or not. If the Tribunal feels that the claim petition filed by the petitioner is a genuine one, the Tribunal can ignore the minor lapses or defects on the part of the claimant in order to render substantial justice to the parties. If the Tribunal had taken a little bit care to verify Exs.A1 to A5, the finding of the Tribunal would be otherwise. The Tribunal ignored all these important and relevant aspects simply because the petitioner deposed that his left leg was amputated above the knee. In view of the overwhelming documentary evidence, I am of the considered view that the finding recorded by the Tribunal is not sustainable. The material placed before the Tribunal clinchingly establishes that the right leg of the petitioner was amputated above the knee.

The petitioner filed medical bills, Exs.A6 to A52 worth Rs.15,000/-. Hence, this Court is inclined to award an amount of Rs.15,000/- towards medicines and treatment. The family members of the petitioner might have stayed in the hospital to look after his welfare. Hence, I am inclined to award an amount of Rs.3,000/- towards attendant charges. It is a known fact that the doctors advised

the patient to take special diet for speedy union of fractures. Taking into consideration the nature of the injuries sustained by the petitioner, I am inclined to award an amount of Rs.5,000/- towards extra nourishment. Due to amputation, the petitioner might have suffered a lot. The suffering undergone by the petitioner cannot be counted in terms of money. Admittedly, the right leg of the petitioner was amputated above the knee. Hence, I am inclined to award a sum of Rs.50,000/- towards pain and suffering. By the time of the accident, the petitioner was aged about 25 years. As per the decision reported in **Sarla Verma v. Delhi Transport Corporation**^[1], the appropriate multiplier to be taken for the age group of 15 to 25 is '18'. It is an admitted fact that the petitioner is a driver by profession. Except the self-serving testimony of P.W.1, there is no other documentary evidence to prove the income of the petitioner. As per the averments made in the petition, the petitioner used to earn Rs.3,000/- per month. Under any circumstances, the petitioner may earn Rs.3,000/- per month. As per the recitals of Ex.A5, the petitioner incurred functional disability of 80%. In order to assess the loss of earning capacity of the petitioner, this Court is placing reliance on the decisions reported in **Rajesh v. Rajbir Singh**^[2] and **Kalpanaraj v. Tamil Nadu State Transport Corporation**^[3]. As per the principle enunciated in the cases cited supra, the Tribunal has to take into consideration the loss of earning capacity of the injured basing on his avocation and age. Admittedly, the petitioner is not fit to drive the lorry. The petitioner can attend some other work and earn something. Taking into consideration the facts and circumstances of the case, I am of the considered view that the loss of earning capacity of the petitioner can be taken as 80%. Hence, the loss of future earnings of the petitioner comes to Rs.5,18,400/- {(Rs.3,000/- x 12) x 18 x 80%}. The compensation awarded under various heads is as follows.

Loss of future earnings : Rs.5,18,400/-

Medicines and treatment : Rs. 15,000/-

Attendant charges : Rs. 3,000/-

Extra nourishment : Rs. 5,000/-

Pain and suffering : Rs. 50,000/-

Total : Rs.5,91,400/-

The amount of compensation awarded under the above heads is just and reasonable to meet the ends of justice. In view of the principle enunciated in **Adam Indur Muttemma v. Rathod Reddia, Nizamabad & Others** ^[4], the Tribunal can grant more compensation than the amount claimed by the petitioner.

The contention of the second respondent is that the petitioner was not having driving license. A perusal of Ex.B2 clearly reveals that the petitioner was having driving license to drive the lorry as on the date of the accident. The contention of the second respondent is negated by the recitals of Ex.B2.

A perusal of the record reveals that the lorry bearing No.AP-07-T-5639, which belongs to the first respondent was insured with the second respondent with effect from 28.12.2005 to 27.12.2006. The policy is in force as on the date of accident, therefore, respondent Nos.1 and 2 are jointly and severally liable to pay the compensation.

In the result, the appeal is allowed by awarding compensation of Rs.5,91,400/- with interest @ 7.5% per annum from the date of the petition till the date of realization. The Tribunal is directed not to release the amount till the petitioner pays the Court fee on the excess amount of Rs.91,400/-. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(T.SUNIL CHOWDARY, J)

15th September 2015
RRB

[\[1\]](#) 2009 ACJ 1298

[\[2\]](#) (2013) 9 SCC 54

[\[3\]](#) (2015) 2 SCC 764

[\[4\]](#) AIR 2015 Hyderabad 117 = 2015 (4) ALD 585