

HON'BLE SRI JUSTICE A. SHANKAR

NARAYANA

C.M.A. No.2706 OF 2004

JUDGMENT:

The petitioner preferred the instant appeal seeking to grant Rs.4,52,200/- as against Rs.3,00,000/- granted by the learned Chairman, Motor Accidents Claims Tribunal – cum – District Judge, Nizamabad (for short 'the Tribunal') by order and decree, dated 29-07-2002, in O.P. No.375 of 1999, as the Tribunal restricted the compensation to Rs.3,00,000/-, though, determined the compensation at Rs.4,52,200/-.

2. The appellant herein is petitioner in the O.P. before the Tribunal, while respondent Nos.1 and 2, who are owner and insurer of bus bearing registration No.AP 25/T 5490, respectively, are respondent Nos.1 and 2, respectively.

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

4. The fact-situation occurring in the instant case is, that on 21-10-1996, the petitioner, as cleaner, was travelling in a bus bearing registration No.AP 25/T 5490, belonging to the 1st respondent, from Nizamabad towards Mumbai, and when it reached Khalapur - Vinegaon villages limits at the wee hours of 2.30 A.M., since the driver of the bus drove it at high speed in a rash and negligent manner, he lost control over the bus, due to which, the bus turned upside down, resulting in petitioner sustaining fracture to his right leg, head injuries and injuries over left leg, back and other parts of his body. He was immediately

shifted to Government Hospital, Khalapur, Khopoli of Maharashtra State. His right leg was amputated above the knee. He claimed that he was 25 years old, working as cleaner on the bus belonging to the 1st respondent, getting a sum of Rs.3,000/- per month, besides daily batta of Rs.100/-. Claiming that he lost earning capacity on account of amputation to his right leg above the knee and spent Rs.80,000/- for treatment, medicines, transport and extra nourishment by undergoing treatment under private doctors, sought to grant Rs.3,00,000/- as compensation from respondent Nos.1 and 2, with interest at 24% per annum.

5. Respondent No.1, owner of the bus, remained *ex parte* before the Tribunal.

6. Respondent No.2 – Insurance Company filed counter opposing the claim.

7. Based on the pleadings, the Tribunal framed the following two issues about the responsibility for the accident.

“1- Whether the petitioner is entitled to compensation sought for?

2- To what relief the petitioner is entitled to?”

8. To substantiate his case, the petitioner besides examining himself as PW.1, has examined Dr.L. Ramulu as PW.2 and exhibited Exs.A-1 to A-7. On behalf of respondent No.2 – Insurance Company, one T. Rajender Sharma, Assistant of respondent No.2 Company was examined and marked Ex.B-1, copy of insurance policy.

9. The Tribunal, on appraisal of evidence, held that due to rash and negligent driving of the driver of the bus belonging to the 1st respondent, the accident has occurred causing injuries to the petitioner which led to amputation of right leg above the knee. The Tribunal basing on the evidence of PW.2 and the documentary evidence and, since the amputation itself was visible, acceded to the permanent partial disability at 60%, if not 70%, fixing the earnings at Rs.3,000/- per month and applied multiplier '17' since he was aged 25 years and arrived at Rs.3,67,200/- towards loss of earning capacity. In addition to the said amount, the Tribunal has also granted Rs.25,000/- towards pain and suffering; Rs.10,000/- towards inevitable expenditure for medicines, transport and extra nourishment. The Tribunal has also granted Rs.50,000/- under the head of social disability and diminution of pleasure of life and amenities and, thus, arrived at a total compensation of Rs.4,52,200/-, but the same was restricted to Rs.3,00,000/-, as the petitioner claimed the said sum as compensation.

10. It is the aforesaid order which is under challenge in the instant appeal contending in the grounds that the Tribunal ought to have granted Rs.4,52,200/-, despite determining the same towards compensation and, therefore, sought to grant the entire amount with interest at 12% per annum as per the Banking Regulations Act.

11. Heard Sri P. Radhive Reddy, learned counsel for the appellant.

12. Perused the order and the evidence on record.

13. During the course of arguments, the learned counsel

for the appellant brought to the notice of this Court that the appeal preferred by the Insurance Company in C.M.A. No.838 of 2003, was allowed by this Court on 16-03-2009, as the 1st respondent, owner of the bus, has not paid the premium to cover the risk of the cleaner, despite paying the premium to cover 25 passengers and, finally, in view of the judgment rendered by this Court in the said appeal in favour of the Insurance Company, sought to dismiss the instant appeal not pressing it. Recording the submission of the learned counsel for the appellant, the instant appeal is dismissed. A copy of the judgment, dated 16-03-2009, in C.M.A. No.838 of 2003, is placed on record for perusal.

15. Accordingly, the appeal is dismissed. There shall be no order as to costs. Copy of the judgment, dated 16-03-2009, in C.M.A. No.838 of 2003, shall form part of the decree.

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

A. SHANKAR NARAYANA, J

June 19, 2015.

Mgr