

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CMA No. 4846 of 2004

Judgment:

Having got dissatisfied with the award of Rs.62,900/- as compensation, by the order, dated 30.07.2004, in MVOP No.1237 of 2002 on the file of the Chairman, Motor Accidents Claims Tribunal-cum–XI Additional District Judge (FTC), Guntur, as against the claim of Rs.1,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act'), the instant appeal is preferred by the petitioner seeking enhancement of compensation.

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the Original Petition before the Tribunal.

3. The fact situation occurring in the instant case is that the petitioner along with others was travelling in an Auto bearing registration No.AP-7X-3138 from Narketpalli to Guntur and, when their Auto reached near Vemulapalli, Nalgonda District, since the driver of the Auto drove it in a rash and negligent manner at high speed and applied sudden brakes, it turned upside down and all the inmates of the Auto received injuries. They were admitted in the Government Hospital, Mangalagiri. The Station House Officer, Vemulapalli Police Station also registered a case in Crime No.81 of 2002, under Section 338 IPC, against the driver of the Auto. The petitioner/claimant sustained grievous injuries and spent huge amount for treatment and, therefore, sought a sum of Rs.1,00,000/- as compensation.

4. The first respondent – owner of the vehicle remained *ex parte*. The second respondent – New India Assurance Company Limited opposed the claim raising various pleas and also violation of terms and conditions of the policy and sought to exonerate it.

5. The Tribunal, based on the said pleadings, framed the following issues.

- “1. Whether the accident occurred due to rash and negligent driving of the driver of the Auto bearing registration No.AP-7X-3138?
2. Whether the petitioner is entitled to compensation and if so, to what amount?
3. To what relief?”

6. During enquiry, the petitioner, besides examining himself as PW.1, also examined Dr. Y. Lakshmana Swamy as PW.2 and marked Exs.A1 to A6 to substantiate his claim and got exhibited Ex.X1. On behalf of the second respondent one K. Jayapal was examined as RW.1 and marked Exs.B1 and B2, which are copy of insurance policy and certificate issued by the Regional Transport Authority.

7. On issue No.1, the Tribunal, taking into consideration the contents of Ex.A1 – certified copy of FIR and Ex.A2 – certified copy of charge sheet and the evidence of PW.1, held that due to rash and negligent driving of the driver of the Auto, the accident had occurred and, accordingly, recorded a finding in favour of the petitioner. On issue No.2, the Tribunal has considered the violations complained by the second respondent and held that at the relevant time the Auto was taken out side the radius of 60 KMs from Guntur, which restriction was imposed by the Regional Transport Authority and, thus, the violation was held proved through the evidence of RW.1 and Ex.B2. The second violation was also held proved because PW.1 himself has spoken that besides him there were four passengers travelling in the Auto, whereas, as per permitted capacity, only three persons were allowed to travel in the Auto, thus, the Tribunal found that both the breaches complained by the second respondent were proved.

8. Concerning the determination of compensation, the Tribunal, basing on the evidence of PWs.1 and 2 and the documentary evidence through Exs.A3 to A6, granted Rs.2,000/- towards medical expenses relying on Ex.A5 – medical bills, Rs.15,000/- towards pain and suffering and fixing the monthly earnings at Rs.1500/- per month and disability at 15% as against 25%, spoken to by PW.2, and applying the multiplier ‘17’, taking the age of the petitioner as 23 years on the date of

accident, arrived at Rs.45,900/- towards loss of future earning capacity and, thus, granted a total sum of Rs.62,900/- with interest at 9% p.a. from the date of petition till realization. In view of the violations, though, the Tribunal held that the respondents 1 and 2 are jointly and severally liable to pay the compensation, but directed the second respondent – Insurance Company to recover the amount from the first respondent – owner of the Auto. Admittedly, no appeal is preferred by the second respondent – Insurance Company. Therefore, these findings recorded by the Tribunal cannot be upset.

9. In the grounds of appeal, the appellant contends that the Tribunal has not properly appreciated the evidence on record and was wrong in reducing the percentage of disability from 25% to 15%, despite the evidence of PW.2 proving that the appellant sustained 25% disability. It is also stated in the grounds that the Tribunal ought to have taken 100% disability as it was fracture of neck of right side and pain and suffering has been the continuing one and, therefore, sought to grant the balance amount.

10. Heard Sri A. Rajendra Babu, learned counsel for the appellant and Sri Kota Subba Rao, learned counsel for the second respondent – Insurance Company. The instant appeal was dismissed against the first respondent – owner of the vehicle for default, by the orders, dated 04.02.2011. Since the first respondent remained *ex parte* and suffered a decree, the dismissal order passed against him is of no consequence in view of the decision of the Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma**.

11. Turning to the questions as to whether the compensation awarded by the Tribunal is just and adequate and whether the petitioner is entitled to enhancement, it is observed at the outset that the Tribunal applied the multiplier '17' and, certainly, the petitioner is entitled for application of the multiplier '18' as per the decision of the Hon'ble Apex Court in **Sarla Verma v. Delhi Transport Corporation**.

12. Concerning the monthly earnings fixed by the Tribunal at Rs.1500/- per month,

the same cannot be disturbed in view of the fact that there is no material and cogent evidence on record to arrive at any enhanced wage.

13. Even concerning the disability fixed by the Tribunal at 15%, the same cannot be disturbed for the reasons that firstly, PW.2 was not the Doctor who treated PW.1 and second, the medical certificate was not issued by PW.2 and, in fact, the petitioner ought to have approached the concerned medical board constituted for the said purpose at the District Headquarters and ought to have taken the disability certificate. In the absence of the same, the disability of 25% spoken to by PW.2 cannot be accepted. Even otherwise, it was not functional disability. Still, PW.2 himself has answered to a question in his cross-examination that PW.1 was not suffering with any disability to drive the Auto, but he cannot do as efficiently as he used to do it before the injury. That has been the reason the Tribunal has arrived at 15% functional disability, and, therefore, the same cannot also be disturbed.

14. When multiplier '18' is applied, the petitioner is entitled to Rs.48,600/- as against Rs.45,900/- towards loss of future earning capacity. The Tribunal has granted Rs.2,000/- towards medical expenses and Rs.15,000/- towards pain and suffering and the same cannot be disturbed. The Tribunal has not granted any amount towards extra nourishment. Keeping in view, the nature of injuries sustained by the petitioner and permanent disability of 15%, a sum of Rs.10,000/- is awarded. Towards attendant charges, though, there is no evidence on record to show that the petitioner has engaged an attender, keeping in view the nature of injuries, a sum of Rs.3,000/- is awarded. Thus, the petitioner is totally entitled to a sum of Rs.78,600/- (Rs.48,600/- + Rs.2,000/- + Rs.15,000/- + Rs.10,000/- + Rs.3,000/-). So far as interest is concerned, the Tribunal has granted interest at 9% p.a., but on the enhanced amount the petitioner is entitled to interest at 7.5% p.a., from the date of petition till realization, as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**.

15. Accordingly, the instant CMA is partly allowed. There shall be no order as to costs.

16. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand closed.

A. SHANKAR NARAYANA, J

Date: 24.11.2015

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