

**HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO**

**M.A.C.M.A. No.1893 of 2005**

**Date: 02-12-2015**

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Between:

Beechu Naga Subba Reddy

.. Appellant

AND

P. Chandra Mohan Reddy and another

.. Respondents

**HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO**

**M.A.C.M.A.No.1893 of 2005**

**ORDER:**

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The claimant in MVOPNo.1240 of 2003 on the file of Motor Accident Claims Tribunal-cum-I Additional District Judge, Cuddapah is the appellant herein.

The petitioner filed the above O.P. with the allegation that on 15-05-2000 when he along with one Gangireddy Veera Prabhakara Reddy were going on TVS 50 motorcycle bearing No.AP-04-C-1450, a tractor bearing No.AP-04-T-8064 came in opposite direction in a rash and negligent manner and dashed against them. The petitioner and the pillion rider received serious injuries. The petitioner was shifted to Government Hospital, Cuddapah and later on he took treatment at NIMS, Hyderabad. He claimed an amount of Rs.2,50,000/-. The 1<sup>st</sup> respondent owner of the tractor remained

*ex parte* and the 2<sup>nd</sup> respondent contested the case. The Tribunal framed the following issues:

- 1) Whether the petitioner received injuries in a motor vehicle accident on 15-5-2000 due to rash and negligent driving of R-1's tractor bearing No.AP-04-T-8064 by its driver?
- 2) Whether the petitioner is entitled for compensation and if so, to what amount and from whom?
- 3) To what relief?

On behalf of the claimant, PWs.1 and 2 were examined and Exs.A.1 to A.7 were marked and on behalf of the respondents, RW.1 was examined and Exs.B.1 to B.4 were marked. On the basis of oral and documentary evidence, the Tribunal came to the conclusion that the accident occurred due to rash and negligent driving of the driver of the tractor bearing No.AP-04-T-8064.

With regard to the compensation, it is noticed that Ex.A.2-Wound Certificate discloses that PW.1 suffered crush injury on the middle and lower third of the right hip injuries the soft tissues and the leg bones, fracture of the both bones of right leg. Ultimately, the injury was mentioned as right leg fracture tibia and fibula and it was a grievous injury. The medical certificate issued by the Orthopaedic Surgeon-Ex.A.4 stated as follows:

- 1) "multiple healed scars present all over the right leg;
- 2) Healed operated scar present over medial side of right leg;
- 3) Deformity of right leg present.
- 4) Flexion of right knee joint is limited by 40 degrees"

As a result of the said accident, the petitioner was unable to squat, sit in crossed leg position, limping was present, apart from stiffness of right leg. Though Ex.A.4 stated the percentage of the disability as 50%, on the basis of the evidence adduced by the doctor as PW.2, the Tribunal held that the disability is 40%. Those findings of fact cannot be disturbed in the appeal preferred by the claimant. The accident took place when the petitioner was aged

about 38 years and he was in patient for nearly 40 days. Since the claimant did not file any document to show the nature of avocation, the Tribunal took the notional income as Rs.15,000/-per annum, applying multiplier of 16 for 40% disability, arrived at Rs.96,000/-. Besides the said amount, the amount claimed for medical bills of Rs.46,672/- was allowed. An amount of Rs.5,000/- was awarded towards pain and suffering. In all, the Tribunal awarded an amount of Rs.1,47,672/-. The said amount is sought to be enhanced in the present appeal.

It is no doubt true that the claimant's occupation is not supported by any evidence. The petitioner claimed that he is an agriculturist doing business in agricultural commodities. Be that as it may, the monthly income of the petitioner could not be less than Rs.2,250/- by taking Rs.100/- per day and giving discount for the holidays. If the said amount is taken into consideration, the total compensation by applying the multiplier of 16 with 40% disability would come to Rs.1,72,800/-. The amount of two medical bills at Rs.46,672/- cannot be disturbed. The amount awarded towards pain and suffering is grossly inadequate and accordingly, it should be enhanced to Rs.20,000/-. The petitioner was in hospital nearly 40 days and he must have lost his earnings during that period and some body must have attended on him during those days. Thus, the balance amount of Rs.10,528/- can be awarded under the said head. Thus, in all an amount of Rs.2,50,000/- is awarded as just compensation in the place of Rs.1,47,672/- as awarded by the Tribunal. The final amount awarded is as follows:

| <u>Heads</u>       | <u>Award of Tribunal</u> |
|--------------------|--------------------------|
| <u>Enhancement</u> |                          |
| 1. Loss of Income  | Rs. 96,000/-             |

|                       |               |       |
|-----------------------|---------------|-------|
| Rs.1,72,800/-         |               |       |
| 2. Medical Bills      | Rs. 46,672/-  |       |
| Rs. 46,672/-          |               |       |
| 3. Pain and suffering | Rs. 5,000/-   | Rs.   |
| 20,000/-              |               |       |
| 4. Loss of earnings   | -----         |       |
| Rs. 10,528/-          |               |       |
|                       | -----         | ----- |
| -----                 |               |       |
| Total                 | Rs.1,47,672/- |       |
| Rs.2,50,000/-         |               |       |
|                       | -----         | ----- |
| -----                 |               |       |

The enhanced amount of compensation shall carry the same rate of 9% interest as was awarded by the Tribunal in its order dated 23-09-2004 in MVOP.No.1220 of 2001. The appeal is allowed accordingly.

A. RAMALINGESWARA RAO, J

Date: 02-12-2015

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