THE HON'BLE SMT. JUSTICE ANIS

M.A.C.M.A. No. 1367 OF 2005

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 25.02.2005, passed by the Motor Accidents Claims Tribunal-cum-IV Additional District Judge, East Godavari, Kakinada, in M.V.O.P.No.456 of 2000, awarding compensation of Rs.1,30,200/-.

2. The appellant/ petitioner filed the above O.P. under Section 166 of the Act, claiming compensation of Rs.3,00,000/- for the injuries received by him in a motor vehicle accident.

3. For the sake of convenience the parties hereinafter will be referred to as they are arrayed in the original petition.

4. The brief averments made in the petition are that the petitioner is a jattu coolie in the offending tractor and trailor bearing No.ADI 7895 and 7896. After loading the stones at Prathipadu, while the tractor driven by respondent No.1 was coming towards Peravaram Village at the outskirts of Sattemmatalli Temple, respondent No.1 drove the vehicle in a rash and negligent manner and unable to control the speed, due to which the vehicle turned turtle, as a result, the petitioner along with two other coolies received injuries; one of the two coolies died and the petitioner sustained injuries in the accident. Immediately, he was shifted to Prathipadu hospital and later shifted to GGH Kakinada. A complaint was given to police and the same was registered with Crime No.35 of 2000 under Sections 304 (A) and

337 IPC against the 1st respondent.

5. The petitioner stated that due to the accident he became totally disabled and lost his income earning capacity, therefore, sought for compensation of Rs.3,00,000/- against respondent Nos.1 to 3.

6. Respondent No.1 remained ex parte. Respondent No.2 died and his Legal Representatives were added as parties and they filed a counter admitting that the petitioner was a jattu coolie under the 2nd respondent.

7. The brief averments made in the counter filed by the 3rd respondent are as follows:

The 3rd respondent put the petitioner to prove the manner of accident, age and income of the petitioner and denied that the 1st respondent was rash and negligent while driving the vehicle and finally stated that the claim of the petitioner is high and excessive and prayed to dismiss the petition.

8. Basing on the pleadings, the Tribunal framed three issues and to substantiate the claim of the petitioner, PWs.1 to 3 were examined and got marked Exs.A.1 to A.4 and Ex.X1. On behalf of the third respondent, no oral evidence was adduced but got marked Ex.B.1 by consent.

9. The Tribunal, after considering the evidence on record, held that the driver of the 2nd respondent i.e., respondent No.1 was rash and negligent while driving the vehicle, due to which the vehicle turned turtle and the petitioner and others received injuries and awarded compensation of Rs.1,30,200/- with interest at 9% per annum. Not satisfied with the compensation awarded by the

Tribunal, the petitioner preferred the present appeal.

10. The learned counsel for the appellant argued that the Tribunal has not considered the evidence of PWs.2 and 3 and also not considered the disability suffered by the petitioner properly and granted a meagre compensation. The Tribunal also not considered the income of the petitioner properly, though the petitioner was earning Rs.4,000/- per month at the time of accident as a jattu coolie. It is also argued that the Tribunal has awarded meagre amount towards extra nourishment and transportation charges. Further, the Tribunal has taken the disability at 30% but the petitioner is not able to do any work and he is still dependent on others. Learned counsel for appellant relied upon the judgement of the Supreme Court in ***Syed Sadiq etc. vs Divisional Manager, United India Insurance Company***[1]***,*** wherein in para No.12 the Apex Court held as follows:

> ***"Therefore, considering that the appellant/ claimant was self-employed and was 24 years of age, we hold that he is entitled to 50% increment in the future prospect of income based upon the principle laid down in Santosh Devi's case (supra)."***

and prayed the Court to enhance the compensation.

11. On the other hand, learned counsel for the Insurance Company argued that the Tribunal after considering the evidence on record rightly awarded compensation for all the heads and that finding needs no interference. It is also argued that there is no documentary evidence i.e., disability certificate issued by the competent authority and the Tribunal after taking into consideration the evidence of PWs.2 and 3, took the disability at 30% and awarded compensation to the petitioner. Therefore, the finding of the Tribunal in this regard also needs no interference. It is also

argued that the Tribunal awarded interest at 9% per annum against the judgment of the Apex Court, therefore, the interest is to be reduced and finally prayed the Court to dismiss the appeal.

12. Having regard to the submissions made by the learned counsel for both the parties, 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?

13. **Points**:

A perusal of the evidence shows that there is no dispute that respondent No.1—driver of the tractor and trailor bearing Nos.ADI 7895 and 7896 was responsible for the accident due to his rash and negligent driving and PW.1 in his evidence clearly stated this fact and from the complaint under Ex.A1 also, it was proved that respondent No.1 drove the vehicle in a rash and negligent manner due to which the accident occurred. Therefore, the said finding needs no interference.

14. So far as quantum of compensation is concerned, the petitioner was working as jattu coolie and earning Rs.4,000/- per month and the Tribunal has taken only Rs.50/- per day as earnings of the injured. Admittedly, as per the evidence of PWs.2 and 3, the petitioner sustained fracture of both bones of right forearm and undergone operations. PW.2—Dr.M.Panduranga Vithal, Assistant Professor of Orthopaedics, stated that the petitioner sustained 15% to 20% disability. PW.3—Dr.Y.Venkateswara Rao, Professor of Orthopaedics and member of the medical board

stated that the petitioner sustained 30% disability. The petitioner present before the medical board and obtained disability certificate to prove that evenafter taking the treatment he was still disabled person. In the absence of his disability certificate, the Tribunal rightly concluded that the petitioner was suffering with 30% disability and granted a reasonable compensation of Rs.97,200/-. In the absence of any evidence regarding the income of the petitioner as Rs.4,000/- per month, the Tribunal has taken Rs.50/- per day which comes to Rs.1500/- per month and awarded loss of income for five months comes to Rs.7,500/-. Apart from the evidence of PW.1 there is no evidence to prove the fact that he was a jattu coolie and therefore, the Tribunal came to the conclusion that the petitioner suffered with injures and granted five months salary as loss of earnings.

15. Though the petitioner claimed Rs.2,000/- towards transportation charges, the Tribunal awarded only Rs.500/-. The petitioner was the resident of Somavaram Village and he met with an accident at the outskirts of Sattemmatalli temple while going from Prathipadu towards Peravaram Village and he was taken treatment initially at Prathipadu hospital and therefrom he was shifted to GGH, Kakinada. Therefore, the petitioner incurred some expenditure for transport charges from his village to hospital and hospital to his village. Hence, an amount of Rs.2,000/- is awarded towards transportation charges by enhancing an amount of Rs.1,500/-. The petitioner filed Ex.A3 —medical bills amounting to Rs.3,859/- and the Tribunal awarded Rs.3,000/- towards medical expenses. It is after the accident the petitioner was admitted in the Government hospital, where he took the treatment free of cost but the fact remains apart from the medicines supplied by the hospital he must have incurred some

amount towards medical expenses, therefore considering Ex.A3 an amount of Rs.4,000/- was awarded i.e., enhancing from Rs.3,000/- to Rs.4,000/- towards medical expenses.

16. According to the petitioner, he claimed Rs.10,000/- towards extra nourishment, as he sustained grievous injuries, but the Tribunal granted an amount of Rs.2,000/-. As per the medical evidence, he sustained fracture of both bones of right forearm, therefore, an amount of Rs.3,000/- is enhanced and thus an amount of Rs.5,000/- is awarded towards extra nourishment. Thus, the petitioner is entitled to enhanced compensation amount of Rs.5,500/- i.e., Rs.1,500/- towards transportation charges, Rs.1,000/- onwards medical expenses and Rs.3,000/- onwards extra nourishment.

17. Thus, the total compensation payable to the appellant/claimant comes to Rs.1,35,700/- (Rs.1,30,200/- + Rs.5,500/-).

18. Accordingly, the compensation awarded by the Tribunal is enhanced from Rs.1,30,200/- to Rs.1,35,700/-. As far as the rate of interest is concerned, in view of the different rate of interests granted by the Hon'ble Supreme Court in the decisions reported in ***Sanobanu Nazirbhai Mirza and others Vs. Ahmedabad Municipal Transport Service***[2] and ***Rebeka Minz and others Vs. Divisional Manager***, ***United India Limited Insurance Company Limited and another***[3], I am of the view that interest at 7.5% per annum shall be awarded on the enhanced amount of Rs.5,500/- from the date of appeal till the date of realisation.

19. In the result, the appeal is partly allowed. No order as to costs. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

(ANIS, J)

07.08.2015
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THE HON'BLE SMT. JUSTICE ANIS

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Date:07.08.2015

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[1] 2014 (2) ALD 133 (SC)

[2] 2013 ACJ 2733

[3] 2012 ACJ 2328