

HON'BLE SRI JUSTICE G.SHYAM PRASAD

MACMA No.155 OF 2006

JUDGMENT:

This appeal is arising out of the order, dated 07.06.2005, in M.V.O.P.No.733 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Kurnool (for short "Tribunal").

2. The point for consideration in this matter is whether the appellant is entitled for enhancement of compensation awarded by the Tribunal?

3. The appellant is the petitioner in M.V.O.P.No.733 of 2003 who claimed compensation of Rs.1,00,000/- on account of the injuries sustained by him, in a motor vehicle accident. The first respondent is the owner, and the second respondent is the insurer, of the vehicle involved in the accident. The accident occurred on 27.02.2003 while the appellant was traveling along with other workers, on a lorry bearing No.AP28 2361 of the first respondent, for sinking a bore well. After completion of the work, the appellant along with his son-in-law, and son returning to Dhone, by sitting on the body of the said bore well lorry, the driver of the lorry had driven it in a rash and negligent manner and applied sudden breaks which resulted in the accident. As a result, the appellant fell down from the lorry and received grievous injuries. He was shifted to Government General Hospital,

Kurnool, where he was treated as in-patient for a few days and he incurred medical expenditure of Rs.30,000/-. He claimed compensation of Rs.1,20,000/- under various heads and restricted his claim to Rs.1,00,000/-.

4. The Tribunal, on consideration of the evidence, has awarded compensation of Rs.29,000/- under various heads. Being aggrieved by the impugned award, this appeal has been preferred for enhancement of compensation.

5. Sri B.Siva Kesava Reddy, learned counsel for the appellant is not present and Sri B.Parameswara Rao, counsel, is appointed as *amicus curiae* in this case, who advanced his arguments on behalf of the appellant. Sri T.Ramulu, learned counsel, advanced arguments on behalf of the insurance company.

6. Learned counsel for the appellant submits that the Tribunal has not taken into consideration the correct income of the appellant. The appellant was earning Rs.100/- per day as his daily wage. On the date of accident also, the appellant was working as a labourer on the lorry for sinking bore well. The Tribunal has taken only Rs.1,500/- per month as his income ignoring the evidence of P.W.1 that the appellant was earning Rs.100/- per day, which amounts to Rs.3,000/- per month. The Tribunal has not given any reasons for not considering the evidence of P.W.1 and for taking Rs.1,500/- per month as the income of the appellant. He further

submits that the income of the appellant has to be taken into consideration as Rs.3,000/- per month for the purpose of calculation of compensation. The Tribunal has not calculated the loss of future earnings based on the structured formula given either in Schedule-II of the Motor Vehicles Act, 1988 or basing on any decision rendered by the Hon'ble Supreme Court, but awarded Rs.60,000/- towards future loss of earnings arbitrarily.

7. The Tribunal has observed in paras 19 and 20 of the award as under:

"19. The evidence of P.W.2 is to the effect that on 28-2-2003, P.W.1 was admitted in Government General Hospital, Kurnool, with fracture of neck of femur on left side and on that day Skin traction was applied and the patient absconded from the Hospital from 12-3-2003 and Ex.X.1 is the case sheet. Further, the evidence of P.W.22 is to the effect that again P.W.1 was admitted in Ortho Unit No.II, Government General Hospital, Kurnool on 18-3-03, that on 24-3-2003 Bipolar Prosthesis replacement left hip was done (half of the left hip joint was replaced), and P.W.1 was discharged on 11.4.2003 and Ex.X.2 is the case sheet. This part of the evidence of P.W.2 is not in dispute. Thus, the evidence of P.W.2 corroborated by the contents of Ex.X.1 and X.2 and Ex.A.3 wound certificate and Ex.A.5 discharge summary prove that P.W.1 received fracture of neck of femur on left side and half of the left hip joint was replaced with artificial implant and that he was treated as an inpatient from 28-2-2003 to 12-3-2003 and from 18-3-2003 to 11-4-2003.

20. Further, the evidence of P.W.2 is to the effect that on 25-10-2003, he examined P.W.1 in Unit II and Ex.X.3 X-ray of left hip was taken and it shows implant in good position and he noted down the same in Ex.A.6 O.P. Chit. He also stated that the movements of left hip joint are restricted and painful and P.W.1 cannot squat and not able to walk without aid and that the disability is 15 to 20% permanent."

8. Though the Tribunal has observed that the appellant has suffered 15% to 20% permanent disability as per the

report of the medical officer, P.W.2., it was not considered as a disability certificate, as the disability was not assessed by the District Medical Board. Unfortunately, the appellant could not be guided properly for obtaining a certificate from District Medical Board, though he had 15% to 20% disability as assessed by the medical officer. There is no evidence on record to show the disability suffered by him. The observations of the medical officer are very clear in paras 19 and 20 of the award that the appellant could not squat, and he was not able to walk without any aid. The appellant had received a fracture of neck of femur on left side. One half of left hip joint was replaced, with artificial implant, and he was treated as in-patient from 28.02.2003 to 12.03.2003 and from 18.03.2003 to 11.04.2003. This fact clearly reveals that the appellant had received a grievous injury, and he underwent implant surgery, and he was unable to squat, and unable to walk without the aid.

9. Admittedly, the appellant was a labourer, who is expected to do physical work which he will not be able to do in future. Therefore, there is severe disability suffered by him and he would have suffered huge future loss of earnings. On these considerations, it can be safely concluded that the percentage of disability as assessed by P.W.2 is serious functional disability for the appellant. When the appellant was unable to squat and walk without aid, his life becomes miserable and he cannot attend to the physical work as a

labourer in future. Therefore, there is an ample evidence on record to show that the appellant has suffered severe disability. The certificate of medical board assessing the disability is not the criteria to disallow the claim of the appellant for awarding compensation for the disability suffered by him.

10. Therefore, the disability of the appellant can be taken into consideration as 20%. The multiplier for the age of the appellant is '13'. The annual income of the deceased is assessed as Rs.3,000/- per month. The compensation comes to Rs.93,600/- (Rs.36,000/- X 13 X 20/100). The Tribunal granted Rs.10,000/- towards pain and suffering and Rs.12,000/- for loss of future earnings and the same do not require any interference.

11. In the result, the appeal is allowed. The compensation awarded by the Tribunal of Rs.29,500/- is enhanced to Rs.1,15,600/- with proportionate costs. The respondents are directed to deposit the enhanced compensation amount within three months from the date of this order. On such deposit, the appellant can withdraw the amount by paying the Court fee for the balance amount exceeding Rs.1,00,000/-, as he restricted his claim to Rs.1,00,000/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of petition till realization. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending shall stand closed.

G. SHYAM PRASAD, J

Date: 09.12.2016
TJMR

