

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

M.A.C.M.A No.707 of 2006

JUDGMENT:

1. This Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), is preferred by the appellant, aggrieved by the order, dated 29.12.2005, in M.V.O.P No.360 of 2003, on the file of the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge (Fast Track Court), Ongole (for short, 'the Tribunal').

2. Appellant herein is the petitioner and the respondents 1 to 4 herein are respondents 1 to 4 before the Tribunal.

3. Facts leading to filing of M.V.O.P. No.360 of 2003, in brief, are that on 17.06.2003 in the morning hours, the appellant came to Kandukur village for mason work and, after completion of work, in the evening at about 8:00 P.M. he boarded an auto bearing No.AP-27-U-9566 belonging to third respondent, to go to his native place Polar Village and when the said auto was proceeding, another auto rickshaw bearing No.AP-27-U-5443, belonging to first respondent, driven by its driver at high speed in a rash and negligent manner coming from opposite direction, dashed against the auto, in which the appellant was traveling, as a result of which, the appellant sustained fracture injury and other grievous injuries. Thereafter, he was shifted to hospital, where he took treatment as inpatient and had spent more than Rs.25,000/- towards medical and other expenses. Due to the accident, his right leg below the knee was amputated. The accident occurred due to rash and negligent driving of the driver of auto belonging to first respondent and thereby the first respondent is liable to pay the compensation. Since

the auto belonging to first respondent has been insured with the second respondent-insurance company, both the respondents are jointly and severally liable to pay the compensation. Hence, the present claim is filed under Section 166 of the Act claiming compensation of Rs.2,00,000/- under various heads.

4. Respondent Nos.1 and 3 remained *ex parte* before the Tribunal.

5. Respondent No.2, insurer of the Auto bearing AP-27-U-5443, and Respondent No.4, insurer of the Auto bearing No.AP-27-U-9566, filed counters opposing the claim.

6. On the basis of the pleadings, the Tribunal framed the following issues:

1. Whether the petitioner sustained injuries in motor vehicle accident caused due to rash and negligent driving of the driver of the auto bearing No.AP-27-U-5433 by its driver?

2. Whether the petitioner is entitled to claim for compensation? If so, to what amount and from whom?

3. To what relief?

7. During course of trial, on behalf of the appellant, PWs.1 and 2 were examined and Exs.A-1 to A-5 and Exs.X.1 and X.2 were marked. On behalf of the respondents, no oral or documentary evidence was adduced.

8. Upon hearing arguments of both the counsel, and considering oral and documentary evidence available on record, the Tribunal decreed the petition, in part, awarding compensation of Rs.14,000/- with proportionate costs and interest at the rate of 7.5% p.a. from the date of petition till realization, making respondent Nos.1 and 2 jointly and

severally liable to pay the compensation but dismissed the claim against respondent Nos.3 and 4.

9. Being aggrieved by the quantum of compensation awarded by the Tribunal, this Appeal is preferred by the appellant.

10. During pendency of the Appeal, the Appeal against respondent No.3, who is owner of auto rickshaw bearing No.AP-27-U-9566, was dismissed for default *vide* order of this Court, dated 25.04.2016.

11. Heard Sri Syed Ghouse Basha, learned counsel for the appellant-petitioner, Sri G. Vishweshwar Reddy, learned counsel for the 2nd respondent-insurance company, and Sri N.J. Sunil Kumar, learned counsel for the 4th respondent-insurance company. None appeared for 1st and 3rd respondents.

12. Considering the rival contentions and perusing the material available on record, the sole point that arises for consideration in this Appeal is, whether the appellant is entitled for enhancement of compensation? If so, to what extent?

13. POINT: Learned counsel for the appellant submits that the dispute is only with regard to quantum of compensation awarded by the Tribunal; that though the appellant has received two grievous injuries i.e., crush injury and multiple fracture of both bones, the Tribunal granted only Rs.12,500/- towards grievous injury and Rs.1,000/- towards simple injury; that though the appellant filed Ex.X.2-M.L.C. No.327 with regard to disability certificate issued by P.W.2-medical officer, which shows that the appellant has suffered 50% disability, the Tribunal has not granted any amount towards the disability suffered by him; that appellant was inpatient for about three months and undergone treatment, but the

Tribunal has not considered this aspect; and that the appellant was a skilled worker mason by profession and used to earn Rs.140/- per day. But, the Tribunal has not considered this aspect in awarding compensation for disability and awarded meager amount of Rs.14,000/- under all heads and, hence, he prays to enhance the compensation.

14. It is obvious from the judgment of the Tribunal that the Tribunal has not given any reason for not considering the disability suffered by the appellant for amputation of his leg below knee. Evidently, Exs.X.1 and X.2 clearly reveal that the appellant had suffered 50% disability because of amputation of his leg below knee level. Ex.X.2 is the M.L.C. No.327, dated 18.06.2003, filed by the medical officer-P.W.2. The Tribunal has not given cogent reasons for discarding this part of evidence in not granting any compensation for the disability suffered by the appellant. It is also pertinent to note that P.Ws.1 and 2 were not cross-examined by the respondents. In spite of that, the Tribunal did not consider the evidence of these witnesses with regard to 50% of disability suffered by the appellant.

15. Having regard to the representation made by learned counsel for the appellant, it is obvious that the Tribunal has not granted any compensation for 50% disability suffered by the appellant though he was a mason by profession. It is also pertinent to note that due to amputation of his leg, he, being mason, may not be able to attend his work as efficiently as before and he would incur loss of earnings in future because of his disability.

16. It is appropriate to refer to the finding of the Tribunal recorded to in Para 10 of the judgment, which is as follows:

“The second witness is the Medical Officer, Government Hospital, Ongole. He gave evidence by identifying the petitioner, who was present in court at the time of giving his evidence. The petitioner was admitted in hospital on 18.06.2003 and discharged on 02.09.2003. The Medical Officer gave his findings on the case sheet of the petitioner. As per case sheet, a crush injury of right leg lower 1/3rd and multiple fracture of both bones. The case sheet is Ex.X1, Ex.X2 is the M.L.C. No.327 dated 18.06.2003 with regard to the fracture of right leg with A.P. and lateral view. The disability as per the records is 50%, because his leg was amputated below the knee. He was cross-examined by fourth respondent. The respondents 2 and 4 did not produce any oral evidence, but they have chosen to file the copy of the policy with regard to their respective vehicles, which were insured with them, which were marked as Exs.B1 and B2 respectively.”

17. It is obvious from the findings of the Tribunal that the appellant has suffered 50% disability because his leg was amputated below his knee but the Tribunal has not awarded any compensation towards the disability of 50%. Hence, the income of the appellant though not Rs.3,000/- can be taken as Rs.60/- per day and as such his monthly income would come to Rs.1,800/- and his annual income would come to Rs.21,600/- and in view of the principle laid down by the Apex Court in *Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another*¹, appropriate multiplier applicable to the age group of the appellant is '14'. If his annual income of Rs.21,600/- is multiplied with the relevant multiplicand i.e., 14, it would come to Rs.3,02,400/- and 50% of the same is deducted towards his disability, the amount of compensation to be awarded under the head of loss of future earnings would come to Rs.1,51,200/-. Apart from this, the appellant is also entitled to an amount of Rs.15,000/- towards one grievous injury,

¹ 2009 (6) SCC 121

Rs.3,000/- towards simple injury and Rs.5,000/- towards pain and suffering of the appellant.

18. The following is the tabular form showing the amount of compensation awarded by the Tribunal and enhanced by this Court, if any, under each head:

Sl.No.	Name of Head	Awarded by Tribunal	Awarded by this Court
01.	Loss of future earnings	---	Rs.1,51,200/-
02.	Grievous injury	Rs.12,500/-	Rs.15,000/-
03.	Simple injury	Rs.1,000/-	Rs.3,000/-
04.	Pain and suffering	Rs.500/-	Rs.5,000/-
TOTAL		Rs.14,000/-	Rs.1,74,200/-

19. Accordingly, with the above calculation, the appellant is entitled to the compensation of Rs.1,74,200/-.

20. Accordingly, with the above observation, the Appeal is allowed in part enhancing the compensation awarded from Rs.14,000/- to Rs.1,74,200/-, keeping in tact the rate of interest awarded by the Tribunal as it is. The respondents 1 and 2 are directed to deposit the entire compensation before the Tribunal within a period of three months from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the entire amount without furnishing any security.

21. As a sequel, miscellaneous petitions, if any, pending shall stand closed. No order as to costs.

JUSTICE G. SHYAM PRASAD

OCTOBER 31, 2016
YVL

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD



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Date:31.10.2016

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