

HON'BLE SRI JUSTICE G.SHYAM PRASAD

MACMA No.142 OF 2006

JUDGMENT:

This appeal is arising out of the order, dated 15.10.2005, in M.V.O.P.No.98 of 2004 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, West Godavari at Eluru (for short "Tribunal").

2. The appellant – National Insurance Company Limited, respondent No.3 in O.P.No.98 of 2004, filed this appeal challenging the impugned award on various grounds.

3. Respondent No.1 herein is the driver of mini lorry bearing No.AP9V 8522 and respondent Nos.2 and 3 are driver and owner of lorry bearing No.TN57Y 3646 respectively. Respondent No.1 herein died and his legal representatives were brought on records as respondent Nos.4 to 7. The claim against respondents 2 and 3 is dismissed for default vide Court order dated 28.04.2016.

4. Heard Sri A.Veerawamy, learned counsel for appellant and Sri K.Chidambaram, learned counsel for respondent Nos.4 to 7.

5. For the sake of convenience, the parties shall be referred to as they are arrayed before the Tribunal.

6. The point for consideration in this matter is whether the award passed by the Tribunal is suffering with any illegality or perversity?

7. The brief facts of the case are that the petitioner was a driver by profession aged about 24 years and was earning Rs.3,00/- per month apart from batta of Rs.50/- per day. On 02.01.2003, while he was driving his lorry bearing No.AP9V 8522, a lorry bearing No.TN57Y 3646 came at high speed driven in a rash and negligent manner and dashed against his lorry, as a result of which, he sustained multiple injuries and he was admitted in the Government hospital, Eluru and was treated as in-patient from 02.01.2003 to 01.08.2003. He underwent four surgeries to his right leg and steel rods were inserted. As the accident took place due to the rash and negligent driving of respondent No.1, the petitioner claimed compensation of Rs.7 lakhs as against respondents.

8. Respondent Nos.1 and 2 have remained *ex parte* before the Tribunal. Respondent No.3 filed counter denying the rash and negligent driving on the part of the driver of the lorry bearing No.TN57Y 3646 and sought for dismissal of the OP.

9. The Tribunal has framed issue Nos.1 and 2 with regard to rash and negligence and with regard to award of compensation and answered them in favour of the petitioner holding that rash and negligent driving on the part of the driver of the crime vehicle is proved and awarded

compensation of Rs.7 lakhs as against the claim of Rs.7 lakhs made by the petitioner.

10. Learned counsel for the appellant mainly disputed the quantum of compensation awarded by the Tribunal. The Tribunal has awarded the following compensation to the petitioner.

- “1) Rs.6,99,108/- towards 100% disability
- 2) Rs.27,416/- towards partial loss of earnings for 8 months
- 3) Rs.3,200/- towards extra nourishment
- 4) Rs.3,200/- towards attendant charges
- 5) Rs.4,620/- towards medical expenditure
- 6) Rs.40,000/- towards pain and suffering.”

The total compensation calculated at Rs.7,78,044/- and it was restricted to Rs.7,00,000/- and the Tribunal awarded the same. Learned counsel for the appellant submits that the Tribunal has taken 100% disability, whereas the disability certificate shows that the injured suffered only 55% of disability.

11. As a matter of fact, the Tribunal has taken into consideration the functional disability of the injured as 100%, though the disability assessed by the medical officer is 55% under Ex.A.9 certificate. The Tribunal by relying on a decision in the case of **Pasupuleti Ramarao v. Pothnaboina Durgarao**¹ had arrived at a conclusion that the petitioner has suffered 100% disability, as he was not in a position to drive

¹ 2001 ACJ 244

the vehicle or to sit or squat properly due to the disability.

The findings of the Tribunal in paras 22 to 25 are as follows:

“22. The learned counsel for the petitioner relied on the decision reported in 2001 ACJ 297 between “PASUPULETI RAMARAO VS. POTHNABOINA DURGARAO AND ANOTHER” and 2001 ACJ 244 between “ORIENTAL INSURANCE CO. LTD., VS. KOTI REDDY AND ANOTHER” for the principle that, the workman is entitled to compensation for loss of earning capacity at 100% when he is found to be unfit for job. In the above cases, the permanent disability of workman is estimated at 60% and 30% respectively by the Tribunals. It is established in the said cases that, the injured cannot drive the vehicles. Taking into consideration the above, their Lordships held that, the percentage of disability should be treated as 100%.

23. The principle underlined in the above reported decision squarely applies to the present facts of the case also. In this case, PW-2 clearly and categorically stated that the petitioner cannot drive the vehicles. Hence the disability should be treated as 100 percent. It is established beyond reasonable doubt that he was working as a driver of the lorry and drawing a sum of Rs.3427/- per month before the accident. By producing Ex.A-10, the petitioner proved that he was aged 24 years on the date of accident.

24. Following the principle underlined in the above reported decisions, now it is necessary to consider the quantum of compensation to be awarded under the head of permanent disability and loss of future earning.

25. The multiplier applicable to the age group of 20-25 years is 17. The annual income of the petitioner is Rs.41,124/-. The disability of the petitioner is treated as 100% as he is not in a position to drive the vehicles or to sit or squat properly. On multiplying the annual income with the multiplier made applicable to the age group of 20-25 years, it comes to Rs.6,99,108/-. Hence, an amount of Rs.6,99,108/- is awarded under this head.”

12. In the light of the decision of the Apex Court in **Raj Kumar v. Ajay Kumar**², it is obvious that the Tribunal has to first decide whether there is any permanent disability and, if so, the extent of such permanent disability. The Tribunal has also to see whether the permanent disability is total or partial. The Tribunal should not mechanically apply percentage of permanent physical disability as percentage of economic loss or loss of earning capacity and the Tribunal has to assess the functional disability.

13. The Tribunal, in the instant case, by relying the decision in **Pasupuleti Ramarao**'s case (1 supra) came to the conclusion that though the disability suffered by the petitioner as per certificate is 55%, the functional disability was taken into consideration as 100%. The Tribunal in para 23 has held as under:

“23. The principle underlined in the above reported decision squarely applies to the present facts of the case also. In this case PW-2 clearly and categorically stated that the petitioner cannot drive the vehicles. Hence the disability should be treated as 100 percent. It is established beyond reasonable doubt that he was working as driver of the lorry and drawing a sum of Rs.3427/- per month before the accident. By producing Ex.A-10, the petitioner proved that he was aged 24 years on the date⁴ of accident.”

The evidence of P.W.2 in this regard is relevant. P.W.2 is a Government doctor who treated the petitioner in the Government hospital. His testimony reveals that the

² (2011) 1 SCC 343

petitioner suffered six injuries and he was treated as in-patient from 02.01.2003 to 04.2003. The X-ray reveals the fracture of right femur and fracture of both bones of right leg. Nailings were inserted into tibia and thigh after conducting a surgery on 04.01.2003. Another operation was conducted on 31.03.2003 and nailings were removed from thigh. Again the petitioner was admitted in Government hospital on 24.05.2003 and was discharged on 28.08.2003. Ex.A.9 is the disability certificate issued by P.W.2 showing the disability as 55%. There is clear evidence of P.W.2 to the effect that the petitioner cannot attend to his normal works and he cannot stand or squat as a normal person due to the injuries suffered by him. It is also the evidence that it is very difficult for the petitioner to move the ankle and knee and he cannot drive the vehicles. The Tribunal placed reliance on the evidence of P.W.2 and case sheet Ex.X.1 and the OP sheets Exs.A.5 and A.6. The Tribunal has rightly appreciated the evidence of medical officer P.W.2 with regard to the functional disability of the petitioner. The petitioner is a driver by profession. Due to the injuries sustained by him, though he suffered disability of 55%, his functional disability can be considered as 100%, as he may not be able to drive the vehicle in future. Therefore, the Tribunal is right in arriving at conclusion that the petitioner suffered 100% disability. Therefore, the findings of the Tribunal do not require any interference.

14. Learned counsel for the appellant further contends that the Tribunal has taken into consideration the income of the deceased as Rs.3,000/- per month without there being any evidence on record.

15. The Tribunal has taken the salary of the petitioner as Rs.3427/- per month considering the evidence of P.W.3 and the documents Exs.X.2 and X.3 Government Orders. Para 12 of the order reads as follows:

“12. PW-3 is the Labour Officer. He deposed that, as per Exz.X-2 and X-3 G.Os., the salary of the Heavy Good Vehicle is Rs.3427/- per month as on 2.1.2003. By examining PW-3, the petitioner proved that the salary of the heavy goods vehicle driver is Rs.3427/- per month on the date of accident.”

The Tribunal has rightly considered the evidence of Labour Officer and came to the conclusion that the income of the petitioner as Rs.3427/- per month in view of the Government Orders Exs.X.2 and X.3. Therefore, the contention of the learned counsel for the appellant that the assessment of salary of the injured is on higher side cannot be accepted.

16. The learned counsel for the appellant further submits that 1/3rd income of the injured has to be deducted towards personal expenditure for the purpose of calculation of compensation for the disability. As a matter of fact, in **Raj Kumar's** case (2 supra), it was held by the Apex Court that 1/3rd of the income need not be deducted. In the said

decision, it was clearly held that 1/3rd amount need not be deducted for calculating the compensation of permanent disability. Therefore, I do not see any force in the argument of the learned counsel for the appellant.

17. Learned counsel for the appellant further submits that the rate of interest awarded by the Tribunal at 9% per annum is highly excessive and it has to be reduced to 7.5% per annum as per the decision of the Hon'ble Supreme Court rendered in **Reshma Kumari v. Madan Mohan**³. As far as this aspect is concerned, in view of the decision in **Reshma Kumari's** case (3 supra), the rate of interest can be reduced to 7.5% per annum. Except this, I do not see any thing to interfere with the award of the Tribunal. The Tribunal has passed well reasoned order and it does not require any interference, except the rate of interest.

18. In the result, the appeal is partly allowed. The award of the Tribunal is confirmed, but modifying the rate of interest from 9% per annum to 7.5% per annum. 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

³ (2013) 9 SCC 65