THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

MACMA.Nos.2677 & 2765 of 2009

COMMON JUDGMENT:

Since these two appeals arise from one and the same accident, they are being disposed of by this common judgment.

The appellants in both these appeals were the petitioners in O.P.Nos.139 & 138 of 2007, respectively, on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge at Nalgonda (for short, 'the Tribunal'). They sought compensation of Rs.2,00,000/- each, for the injuries they sustained in a road accident, by laying claim petitions under Section 166 of the Motor Vehicles Act, 1988. The Tribunal, by separate orders dated 03.02.2009 in the said O.Ps., awarded compensation of Rs.1,03,200/- and Rs.1,02,200/- to the petitioners, respectively. Dissatisfied with the compensation awarded by the Tribunal, the petitioners preferred the present appeals seeking to grant the balance amount.

For the sake of convenience, the parties herein are referred to as they were arrayed in the O.Ps., before the Tribunal.

Heard Smt. K.Rajitha, learned counsel for the appellants, and Sri N.S.Bhaskar Rao, learned standing counsel for the 2nd respondent – Oriental Insurance Company Limited. The 1st respondent, owner of the crime vehicle, though, served with notice in both the appeals, has not entered appearance and he even remained *ex parte* before the Tribunal.

Therefore, his absence is of no consequence to adjudicate upon the request of the appellants herein.

It is unnecessary to deal with the factual matrix in these appeals, as there is no dispute between the parties as to the manner in which the accident did occur leading to the injuries sustained by the petitioners and the treatment they have undergone and even the disability certificates issued by P.W.3. Neither in the cross-examination of P.W.3 nor in the cross-examination of P.W.2, nothing is brought out to show that the disability assessed by the Medical Board, which issued the disability certificates marked as Exs.A8 respectively in both the claim petitions, was excessive.

In the claim petition in the former appeal, the Tribunal, having noted that the petitioner sustained Grade-III compound fracture of both bones of right leg and Grade-I compound fracture of both bones of left leg and had undergone surgical intervention on 05.11.2006, granted Rs.41,700/- towards medical expenses, besides granting Rs.7,500/- towards medicines, though, the pharmacist was not examined to prove the bills, Rs.20,000/- towards permanent disability in relation to 30% permanent disability, Rs.30,000/- for both the injuries as such, Rs.2,000/- towards transportation and Rs.2,000/- towards pain and suffering, making a total compensation of Rs.1,03,200/-.

In the claim petition concerning the latter appeal also, the Tribunal awarded almost identical amounts as awarded in the former appeal, except to the extent of medical expenses and permanent disability, since P.W.3 assessed 40% permanent disability. The Tribunal awarded Rs.35,700/- towards medical expenses and Rs.25,000/- towards permanent disability and arrived at a total compensation of Rs.1,02,200/-.

Learned counsel for the appellants would submit that the Tribunal went wrong in not applying the structural formula, though, it accepted permanent disability at 30% and 40%, respectively, believing the evidence of P.W.3, and even the amounts awarded under the other heads were also meager. Learned counsel would further submit that a labourer in the year 2006 would have earned a minimum of Rs.2,500/- or Rs.3,000/- per month and, therefore, sought to grant the compensation by fixing the monthly income and by applying the structural formula.

Learned counsel for the 2nd respondent – Insurance Company in both the appeals would submit that the Tribunal, besides granting amount towards permanent disability, also granted amount towards injuries, which ought not to have been done. He, however, supports the orders passed by the Tribunal stating that the amounts granted towards compensation were fair and adequate.

A perusal of the evidence on record as well as the orders under challenge in both the appeals would clearly show that the Tribunal has tendered positive finding that the genuineness of Ex.A8 – disability certificate was proved through the oral evidence of P.W.3, who issued the disability certificates and stated that the petitioners were suffering with 30% and 40% permanent disability, respectively. In such an event, the Tribunal ought to have proceeded with determining compensation for the injuries sustained, more particularly, towards loss of future earning capacity by applying the structural formula taking the age of the injured as well as fixing the monthly income, and then ought to have awarded various amounts under relevant heads. Thus, the Tribunal, while granting compensation, did not properly classify the general damages and special damages as per the well laid legal principles.

So far as the former appeal i.e., MACMA.No.2677 of 2009 is concerned, learned counsel for the appellant would submit that the petitioner was 28 years as on the date of accident, but the medical record, more particularly Ex.A4 – discharge summary shows that he was aged 30 years. Thus, it indicates that he has completed 30 years and running 31st year as on the date of the accident. Concerning his income, it is true, that he is a labourer. Though, the notification issued under the payment of Minimum Wages Act is not placed, still, the income of the petitioner can be taken as Rs.2,000/- per month or Rs.24,000/- per annum. It is stated hereinabove that the Tribunal has accepted 30% permanent disability as mentioned in Ex.A8. No doubt the disability mentioned in Ex.A8 relates to an organ functioning, but not total body functioning, however, keeping in view, the injury sustained to both legs being lower limbs, the disability at 30% mentioned in Ex.A8 and spoken to by PW.3 is accepted for computation of loss of future earning capacity of the petitioner. When the same is applied, loss of earning capacity works out to Rs.7,200/- per annum (Rs.24,000 x 30%). Turning to the multiplier, as per the decision of the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**[1], the relevant multiplier factor would be '16' for the persons in the age group of 31 to 35 and when the same is applied, the loss of future earning capacity of the petitioner works out to Rs.1,15,200/- (Rs.7,200 x 16) and the same is, accordingly, granted. Towards loss of temporary earnings, he is entitled to Rs.6,000/- @ Rs.2,000/- per month for a period of three months. Towards pain and suffering, he is entitled to Rs.15,000/-. Towards extra-nourishment, a sum of Rs.5,000/- is granted. Towards transport charges, a sum of Rs.2,000/- is granted. Towards attendant charges, a sum of Rs.4,000/- is granted. Besides these amounts, an amount of Rs.41,700/- granted by the Tribunal towards medical expenses and Rs.7,500/- granted towards medicines in view of the surgery undergone by the petitioner, are maintained. Thus, the petitioner is entitled to a total compensation of Rs.1,96,400/-, as against Rs.1,03,200/- granted by the Tribunal, and the same is, accordingly, granted.

So far as the latter appeal i.e., MACMA.No.2765 of 2009 is concerned, the disability of the petitioner is shown as 40% and that he sustained fracture of both bones of right leg and supra chondylar fracture

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[1] (2009) 6 Supreme Court Cases 121

of right femur. Thus, the injuries sustained by the petitioner are only to the right leg, but not both legs. There is no clear indication as to how 40% disability is arrived at by the Medical Board, more particularly, when PW.3, who is examined to prove the same, has not elaborated with relevant details as to the percentage of restriction of the movement of right leg of the petitioner to arrive at 40% partial permanent disability. As the disability is to one lower limb, but not to both the limbs, the disability can be construed as 30%. Since the petitioner in this appeal is also a labourer and has completed 30 years by the date of accident, the relevant multiplier factor is '16', as adopted in the former appeal, and the annual income can be taken as 24,000/- as in the case of the petitioner in the former appeal. When 30% disability is accepted, he also gets Rs.1,15,200/- towards loss of future earning capacity, as arrived at in the former appeal. He is also entitled to Rs.6,000/- towards loss of temporary earnings, Rs.15,000/- towards pain and suffering, Rs.5,000/- towards extra-nourishment, Rs.2,000/- towards transportation charges and Rs.4,000/- towards attendant charges. Besides these, the amount of Rs.35,700/- granted by the Tribunal towards medical expenses and Rs.7,500/- towards medicines in view of the surgery undergone by the petitioner, are maintained. Thus, the petitioner is entitled to a total compensation of Rs.1,90,400/-, as against Rs.1,02,200/- granted by the Tribunal, and the same is, accordingly, granted.

So far as the rate of interest in both appeals is concerned, the Tribunal awarded the same at 7.5% per annum and, since the same is on the lines of rate of interest awarded by the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**, the same is maintained even on the enhanced amount.

Accordingly, both these appeals are allowed in part modifying the orders passed by the Tribunal, by enhancing the compensation, as indicated above, and confirming the same in all other respects.

As a sequel thereto, miscellaneous applications, if any pending in the instant appeals, shall stand closed. There shall be no order as to costs.

JUSTICE A.SHANKAR NARAYANA

02.12.2016
v v