

HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A.No.262 OF 2006

ORDER:

The appeal is arising out of Original Petition No.2393 of 2001 on the file of the Motor Accident Claims Tribunal-cum-XXI Additional Chief Judge-cum-Additional Metropolitan Sessions Judge for Communal Offence Cases-cum-VII Additional Metropolitan Sessions Judge at Red Hills, Hyderabad (for short, Tribunal).

2. Heard Sri P.Ravinder, learned counsel for appellant and Sri N.Vasudeva Reddy, learned Standing Counsel for respondents.

3. The parties hereinafter are referred to as arrayed before the Tribunal below for the sake of convenience in the appeal.

4. The brief facts of the case are as follows:

On 22.08.2001 while the claimant was crossing road near Salar Jung Bridge, one RTC bus bearing No.AP10Z-4720 turned towards right at Salar Jung Bridge in a rash and negligent manner with high speed and hit the claimant, as a result of which, he fell down on the road and his right leg came under right front wheel of the bus and crushed. Immediately, he was taken to Osmania General Hospital, Hyderabad for treatment. In respect of the above incident, a criminal case was registered in Crime No.397 of 2001 on the file of the Afzalgunj Police Station, Hyderabad. Due to the accident, the left leg of the claimant was amputated and also sustained crush injury on the right leg apart from other injuries all over the body. By the date

of accident, the age of the claimant was 50 years and he was earning Rs.4,000/- p.m., and due to the amputation of his left leg, he got permanent disability and was unable to move from bed and do any work. Hence, he filed said OP claiming compensation of Rs.2,50,000/- for the injuries sustained by him in the said accident.

5. The respondents filed counter denying the allegations made in the petition and attributed negligence to the claimant and sought for dismissal of the claim petition.

6. On behalf of the claimant, he was examined as P.W.1 and got marked Exs.A.1 to A.7. On behalf of the respondents, the driver of the bus was examined as R.W.1 and no documents were marked.

7. Basing on the above pleadings, the Tribunal below framed the following issues:

- (1) Whether the petitioner received injuries in the accident on account of the rash and negligent driving of the RTC bus bearing No.AP10Z-4720 by its driver?
- (2) Whether the petitioner is entitled to any compensation and if so to what amount and from whom?
- (3) To what relief?

8. After considering the oral and documentary evidence available on record, the Tribunal below held that the accident took place due to rash and negligent driving of the driver of the RTC bus No.AP10Z-4720, and by treating the injuries sustained by the claimant i.e., amputation of left leg, crush injuries to the right leg and other injuries all over the body, awarded

Rs.34,587/- towards compensation by applying the multiplier of 4.7, Rs.15,000/- towards pain and suffering and Rs.10,000/- towards medicines, transport and extra nourishment, thus totalling to Rs.59,600/-. Not being satisfied with the quantum of compensation, the claimant preferred the present appeal.

9. The short point that arises for consideration in this appeal is that the Tribunal is correct in applying the multiplier of 4.7 in a case of amputation of a leg of the injured in a motor vehicle accident?

10. Learned counsel for the appellant submits that the multiplier applied by the Tribunal is not in accordance with law. He submits that as per the decision of the Supreme Court in **Sarla Varma v. Delhi Transport Corporation**¹, the correct multiplier to be applied in this case for the age between 51 to 55 is '11', but the Tribunal failed to apply this multiplier, for which, the appellant could not get the just compensation.

11. Learned Standing Counsel for respondents submits that at the time of grant of compensation, the Tribunal has applied multiplier basing on the law existing at that time. He further submits that the above decision is rendered after passing of the award by the Tribunal and therefore the above decision cannot be made applicable to the present case. He further submitted there is no provision for granting of compensation under law for

¹ 2009 (6) SCC 121

disfiguration and mental agony and therefore the appellant is not entitled for compensation under those heads.

12. *per contra*, learned counsel for the appellant submits that the appeal is continuation of the original proceedings and therefore the law existing as on the date has to be made applicable and therefore the above decision is applicable to the facts of the present case.

13. Having regard to the facts and circumstances of this case, since the above decision is holding the filed and it is the law of the law declared by the Supreme Court, the same is made applicable to the facts of the present case. As rightly contended by learned counsel for the appellant that the appeal is continuation of the original proceedings and the decision of the Tribunal has not become final, the law set by the Supreme Court in the said decision can be made applicable to the facts of the present case.

14. The Tribunal has taken the monthly income of the appellant as Rs.1,500/-, and by applying the multiplier of 4.27, it has awarded an amount of Rs.34,587/- apart from Rs.15,000/- towards pain and suffering and Rs.10,000/- towards medicines, transport and extra nourishment. The amount of Rs.34,587/-, as awarded by the Tribunal towards 20% of the disability suffered by the petitioner, is enhanced to Rs.89,100/- (1,500/- X 45/100 X 12 X 11) by applying the

multiplier as per the schedule given in the above decision. The other amounts awarded by the Tribunal i.e., Rs.15,000/- towards pain and suffering and Rs.10,000/- towards medicines, transport and extra nourishment shall not be disturbed. Hence, the total compensation entitled by the appellant is Rs.1,14,100/- (89,100/- + Rs.15,000/- towards pain and suffering and Rs.10,000/- towards medicines, transport and extra nourishment).

15. In the result, the appeal is partly allowed, enhancing the amount of compensation from Rs.59,587/- to Rs.1,14,100/-. The enhanced amount of compensation shall carry the interest @ 7.5% per annum from the date of petition till realization. No order as to costs. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

Date: 31.10.2016.
TJMR

G. SHYAM PRASAD, J