

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.CMA.No.2341 OF 2009

JUDGMENT:

The petitioner in O.P.No.788 of 2006 on the file of Chairman, Motor Accidents Claims Tribunal – cum – District Judge, Karimnagar, preferred the present appeal, aggrieved by the order and decree, dated 31.07.2008, passed in the said O.P., whereby and whereunder, the Tribunal has awarded a sum of Rs.1,48,000/- as compensation with interest at 7.5% per annum for the injuries sustained by him in a road accident, on the ground that the Tribunal went wrong in not only applying lower multiplier factor, but also wrongly arrived at the finding that there is contributory negligence on his part to the extent of 25% and hence, sought to re-determine the compensation and award just and fair compensation.

2. The appellant is the petitioner, while respondent Nos.1 and 2, who are the driver of the R.T.C. bus that involved in the accident and Corporation, are respondent Nos.1 and 2 in the O.P. before the Tribunal.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the Tribunal.

4. The facts that are needed for disposal of the present appeal are that on 03.09.2005, the petitioner, along with his friend, Chevula Devender, went to Manthani on his personal work on Suzuki Motor Cycle bearing registration No.AP-01-B-3987, and while returning to their Village Devumpalli, when they reached near Dhanwada Village

bus stage, respondent No.1, driver of R.T.C. bus bearing registration No.AP-10-Z-6958, since, driven the R.T.C. bus in a rash and negligent manner, dashed the Motor Cycle, due to which, both the petitioner and his friend fell down and sustained injuries. On a complaint given by one of the passengers travelling in the R.T.C. bus, police concerned registered a crime against respondent No.1, driver of the R.T.C. bus.

5. The petitioner, claiming that he was shifted to NIMS Hospital, Hyderabad, and treated as inpatient from 04.09.2005 to 17.09.2005 for the compound fracture of right femur and comminuted fracture of right patella with IDK right knee and steel rods were inserted, that he was unable to walk, as he was hitherto walking, and has developed limping on account of the accident, and that he lost his employment under one Sammi Reddy, earning Rs.6,000/- per month, and even suffered loss of earning capacity, sought a sum of Rs.3,00,000/- as compensation, under Section 166 of the Motor Vehicles Act, 1988, against respondent Nos.1 and 2, who are the driver of the R.T.C. bus and Corporation, represented by its General Manager, respectively.

6. The claim petition against respondent No.1 was dismissed by the Tribunal.

7. Respondent No.2 opposed the claim. The usual defence of petitioner riding his motor cycle in zig-zag manner and occasioning

the accident was pleaded and, thus, sought to dismiss the claim petition against it.

8. The Tribunal framed three issues basing on the pleadings. During enquiry, the petitioner examined himself as PW.1, one Suram Sammaiah as PW.2, the pillion rider as PW.3 and two Doctors as PWs.4 and 5 and marked Exs.A1 to A15. On behalf of respondent No.1, he himself examined as RW.1 and marked Ex.B1.

9. The Tribunal, having analysed the evidence on record, on issue No.1, as regards negligence, held that the petitioner contributed to the extent of 25% and the remaining 75% being contributed by the driver of R.T.C. bus, who is respondent No.1. On issue No.2, the Tribunal, having analysed the evidence of PWs.1, 4 and 5, while rejecting 65% disability spoken to by PW.4, taken 25% disability, and applying multiplier '15', taking the age of petitioner as 32 years on the date of accident, and taking the monthly income of Rs.3,000/-, arrived at Rs.1,35,000/- towards loss of future earning capacity. Besides the same, it has also awarded Rs.38,518/- towards medical expenses and, thus, arrived at Rs.1,73,518/-, but in view of the contributory negligence by the petitioner to the extent of 15%, determined the compensation at Rs.1,47,490/-, but rounded it off to Rs.1,48,000/-. In fact, the Tribunal fixed the contributory negligence at 25%, but, it appears, due to inadvertence, calculated the contributory negligence at 15% instead of 25% and thereby, arrived

the compensation at Rs.1,48,000/-, which is incorrect, and it ought to be Rs.1,30,139/-.

10. Heard Sri Venkateswar Varanasi, learned counsel for the appellant, and Sri A. Ravi Babu, learned counsel for respondent No.2—Corporation. Respondent No.1 was recorded as not necessary party. In fact, the claim petition itself was dismissed against respondent No.1, he being driver of the R.T.C. bus at the relevant time.

11. Perused the order under challenge and the evidence on record.

12. The points that arise for consideration are, firstly, whether the contributory negligence attributed to the petitioner can be sustained and, second, whether the partial permanent disability considered by the Tribunal at 25% does suffer from any infirmity.

13. On point No.1, in fact, the evidence would clearly indicate that the charge sheet was filed against respondent No.1, having registered the crime against him. The complaint was lodged by one of the passengers travelling in the R.T.C. bus. Mere fact that there has been 10 to 12 yards distance between the Motor Cycle and the bus cannot be a ground to cull out negligence viewing that the petitioner did not make any attempt to avert taking place of the accident. If such is the case, certainly, there would not have been taking place of any accident at all. Moreover, the Tribunal has not examined the rough

sketch of scene of occurrence and the scene of occurrence panchanama, which are also not exhibited. Therefore, that finding appears to have been tendered on wrong assumption and cannot remain on record. Hence, the same is set aside holding that only due to rash and negligent driving of respondent No.1, the accident had taken place.

14. Coming to the determination of compensation, the Tribunal has rightly taken 25% disability as against 65% spoken to by PW.4. In fact, there is no amputation at all and it was stated by one of the Doctors that there would have been amputation had the petitioner would not undergo Illizarov fixation, which he means that another surgery ought to be undergone by the petitioner. Whatever may be the reason, the evidence of PWs.3 to 5 does not indicate that the petitioner did undergo such surgical intervention. Besides the same, PW.4 states that the petitioner as an outpatient last visited him on 05.11.2007 and, therefore, the finding recorded by the Tribunal assessing the partial permanent disability suffered by the petitioner at 25% cannot be faulted. But, however, the multiplier factor taken by the Tribunal at '15' requires enhancement, as the relevant multiplier factor is '16' for the age group of persons between 31 and 35 years, in view of the table formulated by the Honourable Apex Court in **Sarla Verma and others v. Delhi Transport Corporation and another**¹. Thus, applying multiplier '16' and taking monthly income of Rs.3,000/- or

¹ 2009 (3) ALD 83 (SC)

Rs.36,000/- per annum and disability at 25%, the future loss of earning capacity works out to Rs.1,44,000/-.

15. The Tribunal has granted Rs.38,518/- towards medical expenses. The same is maintained. Since no amount is granted towards pain and suffering, an amount of Rs.15,000/- is granted towards the same. Towards extra nourishment, an amount of Rs.10,000/- is granted. Towards transportation and attendant charges put together, a sum of Rs.10,000/- is granted. Towards loss of temporary earnings, for a period of six months, a sum of Rs.18,000/- is granted. Thus, the petitioner is totally entitled to Rs.2,35,518/- towards compensation.

16. The Tribunal has awarded interest at 7.5% per annum. Since the said rate of interest is in tune with the rate of interest at 7.5% per annum awarded by the Honourable Supreme Court in **Rajesh and others v. Rajbir Singh and others**², the same is maintained on the enhanced amount also.

17. Accordingly, the appeal is allowed in part. Miscellaneous Petitions, if any, pending in this appeal, shall stand closed. There shall be no order as to costs.

A. SHANKAR NARAYANA, J

October 26, 2016.
MD

² (2013) 9 SCC 54