

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.891 OF 2009

JUDGMENT:

The present appeal is preferred originally by the appellant - petitioner - injured, having got dissatisfied with the award of Rs.6,64,182/- with interest at 7.5% per annum, by the order and decree, dated 06-11-2008, in O.P. No.167 of 2007, on the file of the Chairman, Motor Accident Claims Tribunal - cum - District Judge, Karimnagar (for short 'the Tribunal'), as against the claim of Rs.15,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') for amputation of his both legs on account of injuries he received in a road accident, seeking enhancement of compensation.

2. The appellant No.1 herein is the petitioner, while respondent Nos.1 and 2, who are owner-cum-driver and insurer of lorry bearing registration No.AP 37T 3169, respectively, are respondents as such, in the OP before the Tribunal. During pendency of the present appeal, appellant No.1 died and his legal representatives being wife and children have been brought on record as appellant Nos.2 to 4.

3. For the sake of convenience, the parties herein are referred to as they were arrayed in the OP.

4. The facts, in brief, are that on 26-03-2005 at 8.45 p.m., at the outskirts of Kundanpally village while the petitioner was crossing the

road having attended to calls of nature, a lorry bearing registration No.AP 37T 3169, driven by respondent No.1, who is also incidentally its owner, in a rash and negligent manner hit him and ran over his both legs, due to which, he sustained crush injuries. Immediately he was admitted in Ortho Care Hospital, Godavarikhani, where amputation of B/K right leg through Tibial Condyles and amputation of B/A left leg through ankle was done. He was discharged from the hospital on 29-03-2005. He was re-admitted as in-patient on 29-03-2005 in Area Hospital, Bellampally SCC Limited and was discharged on 02-07-2005.

i) The petitioner, thus, sustained permanent disability and, having become unfit to continue his job as he was hitherto working as Lineman in KK-5 Incline, Mandamarri Area SCC Limited at the age of 48 years, drawing a salary of Rs.12,899.08ps. per month and stating that he would have continued till 60 years had he not been met with an accident, sought a total compensation of Rs.15,00,000/- from respondent Nos.1 and 2.

5. Respondent No.1, owner-cum-driver of the vehicle, remained *ex parte*.

6. Respondent No.2 - Insurer opposed the claim denying every plea put forth in the claim petition and ultimately, sought to dismiss the claim petition.

7. The Tribunal basing on the pleadings, framed four issues about the responsibility for the accident.

8. During inquiry, on behalf of the petitioner, PWs.1 to 5 were examined, amongst whom, PWs.3 and 5 were doctors, and marked Exs.A-1 to A-9 in order to substantiate the claim he made. On behalf of respondent No.2, no witnesses were examined, but a copy of insurance policy was marked as Ex.B-1 on consent.

9. The Tribunal, on issue No.1, basing on the contents of Exs.A-1 and A-2, which are certified copies of first information report and charge sheet respectively, held that the deceased petitioner contributed to the extent of 10%, whereas driver of the lorry contributed to the extent of 90% for taking place of the accident, and accordingly, apportioned the liability.

ii) On issue No.2, the Tribunal on an analysis of the evidence on record, having found Ex.A-8, the disability certificate, where the disability was assessed to a tune of 90% for removal of both lower limbs, as mentioned in the above, and also considering the income of the deceased petitioner at Rs.13,000/- basing on Ex.A-6, salary certificate entries and the age as 54 years, applied multiplier 4.95 adopting the same basing the decision of this Court in **Bhagwandas v. Mohd. Arif**¹, and arrived at Rs.7,72,200/- towards 100% loss of earning capacity and since the disability was considered at 90%

¹. 1987 (2) ALT 137

basing on medical evidence arrived at Rs.6,94,980/-. The Tribunal further granted Rs.33,000/- towards medical expenditure; Rs.10,000/- towards attendant charges and, thus, arrived at a total amount of Rs.7,37,980/- and deducted 10% towards negligence of the petitioner in contributing to the accident and arrived at Rs.6,64,182/- and awarded the same with interest at 7.5% per annum.

10. Heard Sri V.V. Ramana Rao, learned counsel for the appellants, and Sri M.Vara Prasada Rao, learned standing counsel for respondent No.2 - Insurer. Though, service was completed on respondent No.1, owner-cum-driver of the vehicle, none appears for him.

11. The learned counsel for the appellants would submit that the Tribunal was not right in deducting 10% holding that the deceased petitioner contributed to the accident to the extent of 10%, since the evidence of PW.1 would clearly show that after crossing the road he was just moving towards his auto-rickshaw and at that time, the lorry came and hit him and ran over him.

i) His next submission is that, the Tribunal, somehow, adopted wrong multiplier as the multiplier factor is '11' in view of the decision of the Hon'ble Supreme Court in **Sarla Verma & others v. Delhi Transport Corporation and another**². It is also his submission that towards attendant charges, a minimum amount of Rs.10,000/- was

². (2009) 6 Supreme Court Cases 121

granted and no amounts were granted towards other heads and, therefore, sought to grant the amounts.

ii) It is also further submission that, though, the petitioner died during the pendency of the present appeal, his legal representatives have come on record, still, they can pursue the appeal and seek enhancement of compensation to which the deceased petitioner would become entitled, had he been alive.

12. The learned counsel for respondent No.2 would submit that the contents of Ex.A-1 would clearly show that while crossing the road, the accident did occur and, thus, the deceased petitioner was negligent and contributed to the accident, and the Tribunal did not commit any error in apportioning the liability to the extent of 10%. So far as the multiplier factor is concerned, since the law declared by the Hon'ble Supreme Court in **Sarla Verma's Case** (Supra 2) is applicable, the learned counsel fairly concedes the same.

13. Perused the order and the evidence on record, both, oral and documentary.

14. Since FIR marked as Ex.A-1, in express terms, would indicate that the accident occurred while the deceased petitioner was crossing the road after attending calls of nature, the finding recorded by the Tribunal that the deceased contributed to the accident and thereby apportioning liability to the extent of 10%, certainly, cannot

be faulted. Therefore, the said finding is maintained, as it does not warrant interference since the same is based on appreciation of evidence on record.

15. So far as the multiplier factor is concerned, the Tribunal adopted '4.95' basing on the decision of this Court in **Bhagwandas' s Case** (Supra 1). But, in view of the decision of the Hon'ble Supreme Court in **Sarla Verma's Case** (Supra 2), where a table is formulated providing multiplier factors for different age groups, and the deceased petitioner falling within the age group of '51-55' years, the relevant multiplier provided being '11', the same requires to be applied. The Tribunal arrived the monthly income of the deceased petitioner at Rs.13,000/- or Rs.1,56,000/- per annum, the same is maintained. When the multiplier '11' is applied to the said income, it works out to Rs.17,16,000/- [Rs.1,56,000/- x 12].

16. Since the disability assessed by the Tribunal was at 90%, the deceased petitioner is entitled to Rs.15,44,400/- [Rs.90% of Rs.17,16,000/-]. The other amounts of Rs.33,000/- and Rs.10,000/- granted by the Tribunal when added it works out to Rs.15,87,400/-. Since the deceased contributed to the accident to the extent of 10%, when 10% thereof is deducted, the petitioner would become entitled to a compensation of Rs.14,28,660/- as against Rs.6,64,182/- granted by the Tribunal.

17. Concerning rate of interest, the Tribunal awarded at 7.5% per annum, the same is maintained, even on enhanced amount in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**³.

18. In the result, the appeal is allowed in part, and the order and decree, dated 06-11-2008, in O.P. No.167 of 2007, passed by the Tribunal are modified enhancing the compensation to Rs.14,28,660/- from Rs.6,64,182/- with interest at 7.5% per annum thereon from the date of petition till realization. The awarded amount is apportioned among appellant Nos.2 to 4 in equal shares with proportionate interest and costs. No order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

September 01, 2016.

Mgr

³. 2013 ACJ 1403