

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A No. 2130 OF 2009

JUDGMENT:

Aggrieved of the order, dated 11.02.2009, in M.V.O.P. No.242 of 2006, passed by the Chairman, Motor Accidents Claims Tribunal – cum – V Additional District Judge, Tirupati, awarding a sum of Rs.2,50,000/- as against the claim for Rs.5,00,000/-, the instant appeal is preferred by the claimant seeking enhancement.

2. The appellant herein is the claimant and respondent Nos.1 and 2, who are owner of Indica Car bearing registration No.TN 09 AL 9855 that involved in the accident and its insurer, respectively, are respondent Nos.1 and 2, respectively, in the above O.P. before the Tribunal.

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

4. The fact situation would reflect that on 05.03.2006 at about 2.00 p.m., while the claimant was proceeding on his motor cycle bearing registration No.AP 03 L 8559 near MBC 26 Cottage, Tirumala Hills, the above Indica Car owned by the first respondent and driven by its driver in a rash and negligent manner came and dashed him due to which he fell down and sustained fracture to his spine besides other bleeding injuries to his person. Immediately, he was shifted to Aswini Hospital, Tirumala, and from there to SVRR GG Hospital, Tirupati and from there he was referred to Hosmat Hospital, Bangalore, for better treatment. According to the claimant, he was treated as in-patient till 08.03.2006 in SVRR GG Hospital, Tirupati, and from 09.03.2006 to 21.03.2006 at Hosmat Hospital, Bangalore, where surgical interventions were undergone. He was discharged on 20.04.2006. He also took treatment from private doctors. Thus, he sought a sum of Rs.5,00,000/- as compensation for the injuries he sustained.

5. The first respondent owner of the Indica car that involved in the accident, remained *ex parte* before the Tribunal.

6. The second respondent-Insurance Company opposed the claim raising various pleas controverting the disability set out by the claimant. While reserving its defences and seeking protection under relevant provisions of the Motor Vehicles Act, 1988, it sought to dismiss the claim petition with costs.

7. The Tribunal, on the basis of the pleadings, framed three issues about responsibility for the accident.

8. During the course of evidence, the claimant besides examining himself as P.W.1, has examined one Dr.Yogesh K. Pithwa, who treated him at Hosmat Hospital, Bangalore, as P.W.2 and other witnesses as P.Ws.3 to 7 besides marking Exs.A.1 to A.17 to substantiate his claim. On behalf of the second respondent-Insurance Company, none was examined except marking copy of the insurance policy as Ex.B-1, on consent.

9. The Tribunal, on perusal of evidence, recorded a finding on issue No.1 in favour of the claimant.

10. On issue No.2, while determining the quantum of compensation to which the claimant is entitled, the Tribunal granted Rs.10,000/- towards transport to hospital and Rs.1,50,000/- towards medical expenses, though, the medical bills under Exs.A.6 to A.8 and A.10 show that the claimant spent an amount of Rs.1,43,668/-. Thus, an amount of Rs.1,60,000/- was awarded under the head 'special damages'.

11. Under the head 'general damages', the Tribunal has granted Rs.20,000/- towards pain and suffering. Concerning the permanent disability, P.W.2-doctor deposed that the claimant sustained 46% permanent disability. The Tribunal did not agree with P.W.2 on the ground that he has not issued any certificate to that effect, but he had only stated orally while he was in witness box. However, considering the nature of injury and since the age of the claimant was 57 years, a lump sum amount of Rs.70,000/- was granted by the Tribunal towards permanent disability. Thus, a total compensation of Rs.2,50,000/- was awarded with interest @ 7.5% per annum.

12. Dissatisfied with the quantum of compensation awarded by the Tribunal, the instant appeal is preferred by the claimant contending that the Tribunal overlooked the fact of sufferance undergone by the claimant due to 46% permanent disability despite the evidence of PW.2 proving the same, and, therefore, sought to grant the balance amount of Rs.2,50,000/-. No other grounds were agitated by the claimant.

13. Heard Sri P. Govind Reddy, learned counsel for the claimant/appellant. No representation for the second respondent – Insurance Company.

14. The notice sent to the first respondent returned un-served with an endorsement "left". However, in view of the fact that the first respondent remained *ex parte* before the Tribunal and suffered decree, his absence is of no

consequence in view of the decision of a Division Bench of this Court in **MEKA CHAKRA RAO V. YELUBANDI BABU RAO @ REDDEMMA AND OTHERS**^[1], for determining the just and fair compensation.

15. The amounts granted by the Tribunal under the head ‘special damages’ referred to above do not warrant interference. However, it appears that the Tribunal has not specifically taken into account the amount spent by the claimant towards attendant charges. Whether temporary or otherwise, certainly, the service of attendant might have been utilised. In such an event, Rs.2,000/- per month can be granted to the appellant for a period of six months. Accordingly, a sum of Rs.12,000/- is granted to the appellant towards attendant charges.

16. The Tribunal granted Rs.70,000/- towards permanent disability while not agreeing with P.W.2, who assessed the permanent disability at 46%, on the ground that the appellant did not obtain relevant certificate either from the Medical Board concerned or from SVRR GG Hospital, Tirupati or from Hosmat Hospital, Bangalore. However, a perusal of the evidence of P.W.2 discloses that the appellant developed superficial infection of surgical site leading to wound debridement and closer of wound was done and that the appellant was still having implants in the spine. He opined that there was possibility of the appellant’s undergoing surgery for implants removal. It is no doubt true in the cross examination he deposed that surgery for removal of implants is not mandatory but it is probable. Still, the fact remains that a person having implants through out his life would suffer some amount of inconvenience, that too, at the age of 57 years having undergone surgical interventions. In that view of the matter, instead of resorting to structured formula for want of tangible evidence, the amount of Rs.70,000/- granted by the Tribunal towards permanent disability is enhanced to Rs.1,25,000/-.

17. As can be seen from the impugned order, the Tribunal has not granted any specific amount towards extra nourishment. In view of the nature of injuries sustained by the appellant, it would be reasonable to award a sum of Rs.15,000/- towards extra nourishment. Thus, the appellant is entitled to a sum of Rs.3,32,000/- i.e., Rs.1,60,000/- (special damages) + Rs.20,000/- (pain and suffering) + Rs.12,000/- (attendant charges) + Rs.1,25,000/- (permanent disability) + Rs.15,000/- (extra nourishment), as against the sum of Rs.5,00,000/- claimed by the appellant.

18. Accordingly, the Civil Miscellaneous Appeal is allowed in part, enhancing the amount of compensation from Rs.2,50,000/- to Rs.3,32,000/- along with interest at 7.5% per annum on the enhanced amount also from the date of petition till realisation. No order as to costs.

19. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

A. SHANKAR NARAYANA, J

Date: 22.07.2016
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^[1] 2001(1) ALT 495 (D.B.)