

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.CMA.No.1850 OF 2009

AND

CROSS OBJECTIONS (SR) No.37915 OF 2009

COMMON JUDGMENT:

The present appeal is preferred by respondent No.3 - National Insurance Company limited in M.V.O.P.No.247 of 2006 on the file of Chairman, Motor Accidents Claims Tribunal – cum – IV Additional Sessions Judge, Tirupati, aggrieved over the order and decree, dated 20.02.2009, granting compensation of Rs.2,19,600/- for the two grievous injuries, four simple injuries and 30% disability sustained by the petitioner in the said O.P. in a road accident, on the ground that the Tribunal ought not to have fastened liability on the Insurance Company and ought to have fastened liability on APSRTC.

2. Seeking enhancement of compensation, petitioner in the said O.P. preferred the cross objection.

3. The appellant, incidentally respondent No.1 in the cross objections, is respondent No.3, whereas respondent No.1 – cross objector, is the petitioner, and respondent Nos.2 and 3 in the appeal and cross objections, are respondent Nos.1 and 2 in the O.P. before the Tribunal.

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

5. The facts would show that on 19.05.2005 at about 01:15 PM, while the petitioner was driving the Tata Sumo bearing registration No.AP-03-U-4685 owned by respondent No.2 and when he reached near Divyagnana Mandir, Ramapuram Mandal, on Kadapa – Rayachoty road, an R.T.C. bus bearing registration No.AP-10-Z-8372 driven at high speed in a rash and negligent manner coming from Chittoor dashed the Tata Sumo, due to which, the petitioner received injuries. According to the petitioner, he was treated, initially, in the Government Hospital, Kadapa, and referred to SVRR GG Hospital, Tirupati, and from there, he got admitted in Ramadevi Super Speciality Hospital, Tirupati, and discharged from that hospital on 27.05.2005. The petitioner, claiming that he sustained 60% disability, sought a sum of Rs.5,00,000/- as compensation under Section 166 of the Motor Vehicles Act, 1988.

6. Respondent No.1 – Corporation opposed the claim stating that the petitioner alone is responsible for the accident and the claim made by the petitioner was excessive and exorbitant.

7. Respondent No.2, owner of the Tata Sumo, remained *ex parte* before the Tribunal.

8. Respondent No.3, insurer of the Tata Sumo, opposed the claim stating that the accident took place only due to the rash and negligent driving of the driver of respondent No.1's bus, and as such,

respondent No.1 alone is responsible to pay the compensation and the claim made by the petitioner was excessive and exorbitant.

9. Based on the said pleadings, the Tribunal has framed three issues.

10. During enquiry, petitioner examined himself as PW.1, besides, examining Dr. D.B. Sasidhar Reddy, an orthopaedic surgeon working in Ramadevi Super Speciality Hospital, Tirupati, as PW.2 and got marked Exs.A1 to A6, besides marking Exs.X1 and X2, which are estimation certificate and permanent disability certificate, respectively, to substantiate the claim laid. On behalf of the contesting respondents, one S. Nazeer Saheb, driver of the R.T.C. bus, was examined as RW.1, and copy of the policy was marked as Ex.B1.

11. The Tribunal, on appraisal of evidence, while recording a finding on issue No.1 against the petitioner, on issue No.2, on appraisal of evidence of PW.2 and the documentary evidence through Exs.A4 to A6 and Exs.X1 and X2, taking the age of the petitioner as 24 years, income at Rs.3,000/- per month, as the petitioner being a driver, and accepting the disability at 30%, as against 50 – 60% spoken to by PW.2, granted a sum of Rs.1,83,600/- towards loss of future earning capacity, besides granting Rs.10,000/- towards loss of expectation of life, Rs.14,000/- towards the injuries, both, grievous and simple, Rs.10,000/- towards medicines, extra diet and attendant

charges and Rs.2,000/- towards transport charges, thus, making a total of Rs.2,19,600/-.

12. It is the aforesaid order which is under challenge in the instant appeal by respondent No.3, on the ground that the compensation granted by the Tribunal was excessive and that the Tribunal ought to have fastened liability on APSRTC. Dissatisfied with the award of Rs.2,19,600/- as compensation, the petitioner filed cross objection seeking enhancement of compensation.

13. Heard Sri A. Veera Swamy, learned counsel for the appellant, incidentally respondent No.1 in the cross objection, and Sri S.V. Muni Reddy, learned counsel for respondent No.1 – cross objector.

14. Respondent Nos.2 and 3, though, served with notices, none appears for them.

15. Perused the evidence of PW.2. Nothing is brought out in his cross-examination to view his evidence with suspicion or prompted by the petitioner to speak about the disability sustained by the petitioner. Therefore, 30% disability taken by the Tribunal, on the ground that the petitioner did not give explanation as to why he did not approach the Medical Board constituted, for assessing the disability, cannot be faulted.

16. Now, turning to the income, since there is no legally acceptable evidence to show that the petitioner was drawing more than Rs.3,000/- per month, the fixation of petitioner's income at Rs.3,000/- per month or Rs.36,000/- per annum also cannot be faulted. However, so far as the multiplier factor is concerned, the Tribunal has applied multiplier factor '17', but, as the petitioner was 24 years old on the date of accident, as observed by the Tribunal in paragraph No.10 of the order under challenge, the relevant multiplier factor is '18', as provided in the table formulated by the Honourable Supreme Court in **Sarla Verma v. Delhi Transport Corporation**¹. Therefore, when '18' multiplier factor is applied, the loss of future earning capacity works out to Rs.1,94,400/- (Rs.36,000/- x 18 x 30%), as against Rs.1,83,600/- determined by the Tribunal.

17. The amount of Rs.10,000/- granted by the Tribunal towards loss of expectation of life of the petitioner is maintained. The amount of Rs.14,000/- granted by the Tribunal towards injuries is treated as the amount towards pain and suffering. The amount of Rs.10,000/- granted towards medicines, extra diet and attendant charges is maintained, as it is based on appreciation of evidence on record. The amount of Rs.2,000/- granted towards transport charges is enhanced to Rs.5,000/-, keeping in view, that the petitioner is a resident of M. Kothapalle Village of Chittoor District, whereas SVRR GG Hospital and Rama Devi Super Speciality Hospital are located at

¹ (2009) 6 SCC 121

Tirupati, the distance being about 40 Kilometres between the two places. Thus, the petitioner – cross objector is entitled to Rs.2,33,400/- as against Rs.2,19,600/- granted by the Tribunal.

18. So far as fixing liability is concerned, the Tribunal, though, recorded a finding against the petitioner on issue No.1 that due to his rash and negligent driving of the Tata Sumo, the accident took place, but, however, observing that the accident took place due to the use of the Tata Sumo belonging to respondent No.2 and insurance policy was in force on the date of accident, fixed liability on respondent Nos.2 and 3, who are owner and insurer of the Tata Sumo, making them jointly and severally liable to pay the compensation to the petitioner, while dismissing the petition against respondent No.1 – APSRTC. Such finding recorded by the Tribunal, on issue No.1, is based on appreciation of evidence and cannot be faulted with and, thus, does not warrant interference, as there is nothing on record to show that there was negligence of driver of the APSRTC bus contributing to the accident and that the Tribunal has made a definite observation that Ex.B1 – insurance policy covers the risk of driver of the Tata Sumo. Therefore, the present appeal fails.

19. Thus, while dismissing the appeal preferred by the Insurance Company, the cross objections are allowed in part enhancing the compensation from Rs.2,19,600/- to Rs.2,33,400/-. The interest awarded by the Tribunal at 7.5% per annum is maintained on

the enhanced amount also, since it is on par with the rate of interest awarded by the Honourable Supreme Court in **Rajesh and others v. Rajbir Singh and others**².

20. Miscellaneous Petitions, if any, pending in this appeal, shall stand closed. There shall be no order as to costs.

A. SHANKAR NARAYANA, J

September 14, 2016.
MD



² (2013) 9 SCC 54