

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. Nos.83 OF 2008 AND 1873 OF 2009

COMMON JUDGMENT:

M.A.C.M.A.No.83 of 2008 (former appeal) is preferred by the petitioner in M.V.O.P. No.82 of 2005 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge, Tirupati (for short, 'the Tribunal') having got dissatisfied with the award of Rs.3,36,900/- as compensation by the order dated 18.10.2007, as against the claim of Rs.10,00,000/- laid under Section 166(1)(a) of the Motor Vehicles Act, 1988 (for short, 'the Act') for the injuries sustained by him in a road accident; whereas, M.A.C.M.A. No.1873 of 2009 (latter appeal) is preferred by the respondent-Andhra Pradesh State Road Transport Corporation (for short, 'respondent-Corporation') in the same O.P. challenging the very same order on the ground that the compensation awarded by the Tribunal was excessive and arbitrary.

2. The appellant in the former appeal (respondent in the latter appeal) is the petitioner, while the respondent in the former appeal (appellant in the latter appeal) is the respondent in the original petition.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

4. The fact-situation occurring in the present case leading to the injuries sustained by the petitioner and the nature of injuries are all not in dispute between the parties at this stage. The only controversy is whether the compensation awarded by the Tribunal is not just and inadequate or excessive and arbitrary as contended by the respective parties in these appeals.

5. Heard Sri G.Sundaresan, representing Sri P.Govind Reddy, learned counsel for the appellant-petitioner, and Sri Aravala Rama Rao, learned Standing Counsel for the respondent-Corporation in the former appeal, and vice-versa in the latter appeal.

6. Perused the order and the evidence on record, more particularly, Exs.A.3 and A.4, which are the discharge summaries issued by Miot Hospitals, located at Chennai, where the petitioner has undergone treatment.

7. Concerning the evidence of P.W.2 and the disability certificate issued by him under Ex.A.13 assessing the disability at 30%, learned Standing Counsel for the respondent-Corporation disputes the same on the ground that the Medical Board is competent to issue such a certificate, but not by P.W.2, though, in his evidence, he states that he is one of the Members in the Medical Board of SVRR Hospital, Tirupati. Whereas, the learned counsel for the petitioner would submit that the Tribunal has accepted disability at 30%, but for some reason, instead of applying structural formula in assessing the

loss of future earning capacity, somehow, granted a sum of Rs.25,000/- as compensation towards that head and, therefore, it is his submission that the compensation towards loss of future earning capacity has to be assessed by applying structural formula. Whereas, the submission of the learned Standing Counsel is that the Tribunal, having granted Rs.25,000/- towards permanent disability, ought not to have again granted the amount of Rs.20,000/- each towards grievous injuries and Rs.3,000/- each towards simple injuries and, thus, the total amount of Rs.58,000/- ought not to have granted towards two grievous and six simple injuries.

8. At the outset, it has to be held that though, the Tribunal has accepted the disability at 30%, but the fact, that P.W.2 issued it not on behalf of the Medical Board of SVRR Hospital, as the Board's Chairman is the authority to sign nor the petitioner did obtain any permanent disability certificate from the Medical Board constituted at district level. Therefore, no credence can be given to Ex.A.13 and that finding recorded by the Tribunal has to be upset.

9. Turning to the amount granted by the Tribunal is inadequate or excessive, as contended by the respective parties, a perusal of Exs.A.2 to A.4 would show that what was the amount granted by the Tribunal appears to be on lower side. The petitioner initially admitted in the hospital on 07.09.2004 in Miot Hospitals with the injuries found by the Medical Officer thus:

- "1. Grade IIIB compound fracture right femur with lacerated wound over thigh and leg.
2. Fracture ribs left 6th, 7th and 5th.
3. Hypovolemic shock with hypoxia on admission."

The other relevant particulars have been mentioned in Ex.A.3 making an endorsement that seven weeks thereafter, the petitioner was required to attend for removal of the implants and he was discharged on 01.10.2004. Thus, he was in hospital as an inpatient for about 23 days during the first spell.

10. The discharge summary relating to the second spell would show that the petitioner again, admitted in the hospital on 09.12.2004 and discharged on 10.12.2004 for removal of distal interlocking screws with the observation that the post-operative period was uneventful and, in fact, the fracture is shown as well-united and the petitioner had regained full health. Thus, when kept in view, the treatment undergone by him and surgical interventions, certainly, the amount of Rs.20,000/- granted towards Grade IIIB compound fracture of right femur with lacerated wound over thigh and leg appears to be not reasonable. Therefore, it is enhanced to Rs.50,000/- from Rs.20,000/-. The amount of Rs.20,000/- granted by the Tribunal towards fracture of 6th and 7th ribs is maintained. The amount of Rs.18,000/- granted towards six simple injuries is also maintained. However, the amount of Rs.25,000/- granted by the Tribunal towards

permanent disability has to be withheld for the reason that for the injuries, distinct amount is granted.

11. The amounts of Rs.2,13,765/-, Rs.12,520/-, Rs.11,614/- and Rs.6,005/- granted by the Tribunal towards medical expenses, covered by Exs.A.9, A.10, A.11 and A.14, are maintained.

12. The Tribunal has granted Rs.10,000/- towards pain and suffering. In view of the injuries sustained and the inconvenience to which the petitioner was put, the same is enhanced to Rs.25,000/- from Rs.10,000/-. The Tribunal has not granted any amount towards extra nourishment. Therefore, a sum of Rs.10,000/- is granted towards extra nourishment. Even towards attendant charges and transport charges, no amount was granted. Therefore, a sum of Rs.20,000/- is granted towards attendant charges, keeping in view the fracture he sustained, and towards transport charges also, a sum of Rs.20,000/- is granted, as the petitioner must have traveled by engaging a private taxi.

13. Ex.A.12 shows that the petitioner was drawing Rs.17,147/- towards salary as Assistant Professor, College of Veterinary Sciences, Tirupati, and he was on earned leave for 84 days. Therefore, a sum of Rs.48,012/- is granted towards loss of earnings for the said period.

14. Thus, the petitioner is entitled to a total sum of Rs.4,54,916/- (Rupees four lakhs fifty four thousand nine hundred and

sixteen) as against Rs.3,36,900/- granted by the Tribunal towards compensation and the same is accordingly granted. So far as the rate of interest is concerned, the Tribunal granted the same at 7.5% per annum and the same is maintained on the enhanced amount also in view of the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**¹.

15. Accordingly, M.A.C.M.A. No.83 of 2008 is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation, as indicated above, and confirming the same in all other respects; whereas M.A.C.M.A. No.1873 of 2009 is dismissed. There shall be no order as to costs.

16. As a sequel thereto, miscellaneous petitions, if any pending in both the appeals, stand closed.

A. SHANKAR NARAYANA, J

28th September, 2016

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¹ 2013 ACJ 1403