

HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 94 OF 2006

JUDGMENT:

1. This Appeal is arising out of the order, dated 23.08.2005, in M.V.O.P. No.192 of 2002, on the file the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge, East Godavari District at Kakinada (for short, 'the Tribunal').

2. Appellant herein is the petitioner in M.V.O.P. No.192 of 2002, filed under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') claiming compensation of Rs.2,50,000/- with proportionate costs and interest at the rate of 12% p.a. from the date of petition till realization. 1st respondent herein is the driver, 2nd respondent herein is the owner and 5th respondent herein is the insurer of Taxi bearing No.AP31T 6444, 3rd respondent herein is the driver, 4th respondent herein is the owner of Auto bearing No.AP5X 9984, before the Tribunal, respectively.

3. The brief facts of the petition are that while the appellant was traveling in an Auto bearing No.AP5X 9984, one Taxi bearing No.AP31T 6444 dashed against the auto, due to which the Auto turned turtle and the appellant received grievous injuries. Immediately, she was shifted to Government Hospital, Kakinada, where she was treated as inpatient for 3 months 15 days. Her left leg ankle was amputated and she was unable to attend her works, filed the petition against the respondents herein claiming compensation of Rs.2,50,000/-.

4. Respondent Nos.1 to 4 remained *ex parte* before the Tribunal.

5. Respondent No.5, who contested the matter, filed counter denying the liability, wherein he had taken several pleas with regard to violation of terms and conditions of the insurance policy like violation of permit, and fitness of the vehicle to ply on the roads etc.,

6. Basing on the pleadings, the Tribunal framed the following issues:

1. Whether the accident occurred due to rash and negligent driving of R1, the driver of Taxi bearing No.AP31T6444, resulting in the injuries to petitioner?

2. Whether the petitioner is entitled to claim compensation? If so, to what amount and from whom?

7. During course of trial, on behalf of the appellant, PW.1 was examined and Exs.A-1 to A-5 and Ex.X-1 were marked. On behalf of the contesting respondent, RW.1 was examined and Ex.B-1 and B-2 were marked.

8. The Tribunal, on consideration of the evidence of the witnesses, partly allowed the petition awarding compensation of Rs.50,000/- as against the claim of Rs.2,50,000/-, making liable to pay the same by respondent Nos.1, 2 and 5, dismissing the claim against respondent Nos.3 and 4.

9. Feeling aggrieved by the quantum of compensation, the appellant is before this Court.

10. The point for consideration in this matter is, whether there are sufficient grounds for enhancement of the compensation?

11. POINT: Mr. N. Siva Reddy, learned counsel for the appellant, submitted that the Tribunal has not considered the disability suffered by the appellant, due to the injuries received in the accident. The appellant had suffered 40% permanent disability. But, the Tribunal has awarded a meager amount of Rs.40,000/- towards permanent disability, Rs.5,000/- towards grievous injury and Rs.5,000/- towards pain and suffering and mental agony, in all amounting to Rs.50,000/-. Hence, the appellant sought for enhancement of compensation.

12. The appeal against respondent No.2 herein, owner of Taxi, was dismissed for default *vide* order of this Court on 20.04.2016.

13. Mr. K. Subba Rao, learned counsel for 3rd respondent-insurance company, strenuously opposed for awarding any further compensation in this matter on the ground that the appellant has not produced any evidence in proof of her contentions, more particularly, with regard to 40% permanent disability, suffered by her.

14. Admittedly, the appellant was treated as inpatient for 100 days in the Government General Hospital, Kakinada. She has filed Ex.A-2 – disability certificate which shows that she has suffered 40% permanent disability. The Tribunal without taking into consideration the income of the deceased and simply applying the multiplier awarded Rs.40,000/- towards 40% disability, suffered by her. The

evidence of PW.1 shows that she was doing business and her turnover was Rs.4,000/- per day and as such her annual income was Rs.4,00,000/-. But, there is no satisfactory evidence for the income of the appellant that she was earning Rs.4,00,000/- p.a. Therefore, her notional monthly income is taken as Rs.3,000/- and as such her annual income would be Rs.36,000/-. The age of the appellant at the time of the accident was 53 years. In view of the principle laid down by the Apex Court in *Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another*¹, the relevant multiplier applicable to the age group of the appellant between 51 to 55 years is '11'. If the multiplier 11 is multiplied with Rs.36,000/-, being notional annual income of the appellant, the same would come to Rs.3,96,000/- and 40% from out of Rs.3,96,000/- would come to Rs.1,58,400/- but the Tribunal erroneously awarded Rs.40,000/- towards 40% disability. Therefore, the compensation of Rs.40,000/- awarded by the Tribunal towards 40% disability is enhanced to Rs.1,58,400/- in view of the principle laid down in *Sarla Verma*¹.

15. Learned counsel for the appellant further submitted that when there is a claim of Rs.1,07,500/- towards future expectancy of life, the Tribunal did not award any amount. Therefore, keeping in view of the age of the appellant, an amount of Rs.10,000/- is awarded under this head. Since the compensation awarded under other heads does not require any interference, the same holds good.

¹ AIR 2009 SC 3104

16. The following is the tabular form showing the amount of compensation awarded by the Tribunal and enhanced by this Court, if any, under each head:

Sl.No.	Name of Head	Awarded by Tribunal	Awarded by this Court
01.	Grievous injury	Rs.5,000/-	Rs.5,000/-
02.	40% permanent disability	Rs.40,000/-	Rs.1,58,400/-
03.	Pain and suffering and mental agony	Rs.5,000/-	Rs.10,000/-
04.	Loss of future expectancy of life	---	Rs.10,000/-
TOTAL		Rs.50,000/-	Rs.1,83,400/-

17. Accordingly, with the above calculation, the Appeal is allowed in part, enhancing the compensation awarded by the Tribunal from Rs.50,000/- to Rs.1,83,400/-. The Tribunal has awarded interest at the rate of 6% p.a. In view of the principles laid down by the Larger Bench of this Court in *A.P.S.R.T.C. and another Vs. B. Vijaya and other*², and in view of the decision of the Apex Court in *Dharampal and others Vs. U.P. State Road Transport Corporation*³, this Court feels it appropriate to award interest at the rate of 7.5% p.a. from the date of petition till realization.

18. As a sequel to disposal of the appeal, miscellaneous petitions, if any, pending in this Appeal shall stand closed as infructuous.

G. SHYAM PRASAD, J

Date: 18.11.2016.
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² MANU/AP/0724/2002

³ MANU/SC/7680/2008

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