

HON'BLE SRI JUSTICE G.SHYAM PRASAD

MACMA No.314 OF 2006

JUDGMENT:

1. This appeal is arising out of the order, dated 08.09.2005, in O.P.No.109 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-Additional District Judge, Hindupur (for short, "Tribunal").

2. Appellant herein is the petitioner in O.P. No.109 of 2003, filed under Sections 140 and 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') claiming compensation of Rs.1,00,000/- for the injuries sustained by him in a motor vehicle accident that occurred on 03.10.2002.

3. 1st respondent herein is the owner of the crime vehicle, a van bearing No.AP02V 3077 and 2nd respondent is insurer of the van.

4. The facts, in brief, are that on 03.10.2002, at about 08.30 PM, when the appellant along with others were going on bullock cart from Karavulapalli Thanda to Gangamapalli forest to get firewood, Mahendra van bearing No.AP 02 V 3077, driven by its driver at high speed in a rash and negligent manner, dashed against the bullock cart, due to which, the appellant fell down and sustained grievous injuries and was shifted to Hospital, Hindupur and thereafter he was taken to Victoria Hospital, Bangalore and there he had taken

treatment for eight days as in patient and thereafter discharged from the hospital. He incurred an amount of Rs.20,000/- towards medical expenses in a private hospital. The Station House Officer, Gorantla Police Station, registered a case in Crime No.60 of 2002. The appellant claims that he sustained permanent disability on account of accident and, therefore, sought Rs.1,00,000/- towards compensation, making respondents 1 and 2 jointly and severally liable to pay compensation.

5. The 1st respondent, the owner of the vehicle remained *ex-parte* before the Tribunal.

6. The 2nd respondent-insurance company filed counter denying the liability and contended that there is no negligence on the part of the driver of the van, and that the driver of the van did not possess valid driving license, and that the van had no valid permit, registration or fitness certificate to ply the vehicle on the road and that the injuries sustained by the appellant are simple in nature, as such the compensation claimed by him is highly excessive and exorbitant. Hence, the insurer has sought for dismissal of the petition.

7. Basing on the said pleadings, the Tribunal framed three issues about the liability of the insurer. They are as follows:

“1) Whether the accident is the result of rash and negligent driving of driver of the vehicle bearing No.AP02V 3077 as alleged in the petition?

2) Whether the petitioner is entitled to the compensation claimed, if so, to what amount and from which of the respondents?

3) To what relief?”

8. During course of enquiry before the Tribunal, on behalf of the appellant, PWs1 and 2 were examined and Exs.A.1 to A.6 were marked. On behalf of the respondents, no oral and documentary evidence was adduced.

9. On appraisal of evidence, answered point No.1 that due to rash and negligent driving of the driver of the van, the accident had occurred.

10. On point No.2, the Tribunal having considered Ex.A.2-copy of wound certificate and testimony of PW.2 - medical officer, held that the appellant sustained fracture to his right femur, and there is mal-union and he had suffered disability of 60%. The appellant had taken treatment at Victoria Hospital, Bangalore, but could not produce any medical record in relation thereto and therefore the Tribunal notionally awarded compensation @ Rs.60,000/-, and awarded interest @ 5% per annum from the date of petition till realization, holding both the respondents jointly and severally liable for payment of compensation.

11. Having not satisfied with the compensation granted by the Tribunal, the appellant preferred the present appeal

contending that the Tribunal did not properly appreciate the nature of injuries sustained by him.

12. Heard Sri A. Manohar Reddy, learned counsel for the appellant, and no representation on behalf of the respondents.

13. Learned counsel for the appellant contends that the compensation awarded by the Tribunal is very low and it requires enhancement. The Tribunal has not considered the evidence in proper perspective about the percentage of disability suffered by the appellant and the treatment undergone by him at Victoria Hospital, Bangalore and awarded inadequate compensation.

14. Admittedly, against the claim of the appellant for Rs.1,00,000/- the Tribunal has awarded compensation of Rs.60,000/- compensation. The main contention of the appellant in this appeal is that the Tribunal has not taken into consideration 60% disability suffered by the appellant. Ex.A.6 is the certificate issued by the Medical Board, Ananthapur showing 60% disability. Ex.A.2 is the wound certificate showing following injuries:

- (i) lacerated wound over the back of lower leg with postero medial aspect of right popliteal fosse 4 x 2 c.m. muscles exposed, no bone is visible;
- (ii) An abrasion of 2.5 x 2.5 present over the upper third of right leg on the anterior aspect;

(iii) Deformity present over the lower third of right thigh, tenderness present, abnormal mobility present supra condylar fracture of right femur present.

(iv) Diffuse swelling of right knee present, fracture of upper part of right tibia present.

15. Injuries 3 and 4 are grievous in nature and the injuries 1 and 2 are simple in nature. The evidence of PW.2 – medical officer, clearly reveals that the appellant has sustained fracture to his right femur and there is mal-union and the disability was 60%. Taking into consideration the age of the appellant as 33 years and his dependency on agriculture and disability sustained by him, the Tribunal awarded a compensation of Rs.60,000/-. It is pertinent to note that the Tribunal has not awarded any compensation towards pain and suffering and injuries suffered by the appellant. Hence, it is just and reasonable to grant an additional sum of Rs.10,000/- towards pain and suffering and injuries suffered by the appellant and Rs.6,000/- towards loss of earnings for two months. Thus, the appellant is entitled to Rs.76,000/- in view of the principle laid down by the Apex Court in **Smt. Sarala Varma and others Vs Delhi Transport Corporation and another**¹. In view of the Larger Bench decision of this Court in **A.P.S.R.T.C. and another Vs. B. Vijaya and other**² and a decision of the Apex Court in **Dharampal and others Vs. U.P. State Road Transport**

¹ 2009(6) SCC 121

² MANU/AP/0724/2002

Corporation³, the rate of interest awarded by the Tribunal is enhanced from 6% to 7.5% p.a.

16. Accordingly, the Appeal is allowed in part enhancing the compensation from Rs.60,000/- to Rs.76,000/- with proportionate costs and interest @ 7.5% per annum. The 2nd respondent is directed to deposit the amount within two months from the date of receipt of a copy of this order. On such deposit, appellant is permitted to withdraw half of the decretal amount and the remaining can be withdrawn after expiry of the appeal time. There shall be no order as to costs.

17. In the result, the appeal is partly allowed accordingly. As a sequel, miscellaneous petitions, if any, pending shall stand closed.

Date. 18.11.2016
kvrn

G. SHYAM PRASAD, J

³ MANU/SC/7680/2008