

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.292 OF 2009

JUDGMENT:

The instant appeal is preferred by the United India Assurance Company Limited, which is respondent No.3 in O.P. No.316 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Karimnagar at Jagitial (for short, 'the Tribunal'), under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act'), aggrieved by the award and decree dated 09.04.2007, passed in the said original petition, granting compensation of Rs.5,66,860/- with interest at 7.5% per annum for the injuries sustained by respondent No.1 herein, who, in fact, suffered even amputation up to knee level, on the ground that the compensation is highly excessive and exorbitant.

2. Respondent No.1 herein is the petitioner, while the appellant and respondent Nos.2 and 3 herein, who are the insurer, driver and the owner of Tata Sumo bearing registration No.AP 15V 5195, respectively, were respondent Nos.3,1 and 2, respectively, in the original petition.

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

4. The facts, in brief, are that on 12.06.2005, while the petitioner along with one T.Naresh was proceeding on a

scooter bearing registration No.AP 15 3725, driven by him, to Kondagattu for darshan of Lord Hanuman and when he reached a toddy shop situated in the outskirts of Fazilnagar, a Tata Sumo bearing No.AP 15 V 5195, driven by respondent No.1 in a rash and negligent manner, came in opposite direction and dashed the scooter, due to which, the petitioner, having fallen down, received fractures to various parts of his person. He was immediately shifted to M.G.M. Hospital, Warangal, where his right leg was amputated. Thereafter, he was admitted in Sri Shiva Durga Nursing Home, where he had undergone two surgical interventions and implants were fixed. Claiming that he was earning Rs.8,000/- per month on his profession of gold smithery and that, due to accident, he spent Rs.91,000/- towards treatment and sustained permanent disability, the petitioner sought a sum of Rs.7,00,000/- as compensation from respondent Nos. 1 to 3.

5. Before the Tribunal, respondent Nos.1 and 2 filed a common counter attributing negligent driving on the part of the scooterist. No other tangible resistance was averred by respondent Nos.1 and 2.

6. Respondent No.3 opposed the claim raising various pleas attributing negligence to the petitioner also and, thereby, claimed that there is contribution on the part of the petitioner also for taking place of the accident.

7. Basing on the said pleadings, three issues were framed by the Tribunal.

8. During enquiry, the petitioner examined himself as P.W.1, besides examining three doctors as P.Ws.2 to 4 and marked Exs.A.1 to A.59. On behalf of the respondents, no witnesses were examined and no documents were marked.

9. The Tribunal, on appraisal of evidence, recorded a finding in favour of the petitioner on issue No.1. On issue No.2, the Tribunal, placing reliance on the decision in **New India Assurance Co. Ltd. vs. Anuj Sharma and others**^[1], accepted the disability spoken to by P.W.2, but, however, as against 70% disability spoken to by P.W.2, fixed the disability at 50% only on the ground that there could not have been any hindrance for the petitioner in pursuing his business of gold smithery. The Tribunal has taken the monthly income of the petitioner at Rs.4,000/-, though, the petitioner claimed that he was earning Rs.8,000/- per month, and by considering the age of the petitioner as 36 years, applied the multiplier '14.41' as per the decision in **Bhagwandas vs. Mohd. Arif**^[2], and arrived at Rs.3,45,840/- towards diminution in the earnings on account of 50% disability. Besides the same, the Tribunal has granted Rs.75,000/- for five injuries, Rs.15,000/- towards pain and suffering, Rs.93,020/- towards medical expenses,

Rs.20,000/- towards loss of future amenities, Rs.10,000/- towards transport charges, Rs.5,000/- towards servant charges and Rs.3,000/- towards extra-nourishment, making a total sum of Rs.5,66,860/- as compensation.

10. The insurer, having got aggrieved more particularly, on the partial permanent disability assessed at 50%, preferred the instant appeal on the ground that the compensation granted by the Tribunal is excessive.

11. Heard Sri Ravi Shankar Jandhyala, learned Standing Counsel for the appellant, and Sri Ramachandra Rao Vemuganti, learned counsel for respondent No.1.

12. This appeal is of the year 2009. Since respondent Nos.1 and 2 are the driver and owner of the Tata Sumo, their absence would not make any difference in adjudicating upon the issue herein, as they suffered decree passed by the Tribunal.

13. Learned counsel for the appellant would submit that the amount of Rs.3,45,840/-, granted by the Tribunal towards partial permanent disability or diminution in earnings on account of 50% disability, is not based on any legally acceptable evidence, as the disability certificate was not at all issued by the competent Board. It is also his submission that P.W.2, though, averred that the petitioner suffered 70% disability, has not issued any certificate to that effect and, as such, in the absence of disability certificate, the Tribunal

was not justified in fixing the disability at 50%, more so, when there was no hindrance for the petitioner to pursue his profession, as the amputation of leg up to the knee level would not come in the way of his pursuing the profession of gold smithery.

14. Learned counsel for respondent No.1 would submit that on account of amputation, the mobility itself is affected and even then the Tribunal, instead of taking 70% disability, has taken only 50% disability and assessed the compensation.

15. Perused the order and evidence on record.

16. The very fact that the amputation was up to the knee level is sufficient enough to uphold the finding recorded by the Tribunal in accepting the disability at 50%, irrespective of the fact that it would not affect the profession the petitioner was pursuing. The income taken by the Tribunal at Rs.4,000/- per month would be reasonable and, therefore, viewed from any angle, the amount of Rs.3,45,840/- granted towards partial permanent disability or diminution in the earnings on account of the said percentage of disability, cannot be faulted. Concerning the amounts granted under other heads, there is no dispute raised by the Insurance Company and, as such, the same are confirmed. So far as the rate of interest is concerned, the Tribunal granted the same at 7.5% per annum, which is in

accordance with the decision in **Rajesh and others v. Rajbir Singh and others**^[3]. The appeal is, therefore, devoid of merit.

17. Accordingly, the instant appeal is dismissed. There shall be no order as to costs.

18. Miscellaneous applications, if any pending in the instant appeal, shall stand closed.

A. SHANKAR NARAYANA, J

26th July, 2016
v v

^[1] 2007 ACJ 640
^[2] 1987 (2) ALT 137
^[3] 2013 ACJ 1403