

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2676 of 2005

JUDGMENT :

The instant Civil Miscellaneous Appeal is preferred by the appellants, who are respondent Nos.2 and 3 viz., Divisional Forest Officer, Logging Division, Kothagudem, Khammam District, and the District Forest Officer, Vizianagaram District, respectively, aggrieved by the order and decree dated 26.08.2003 in O.P.No.949 of 2001 passed by the Chairman, Motor Accidents Claims Tribunal (Additional District Judge), Vizianagaram (for brevity "the Tribunal"), whereby and whereunder, a sum of Rs.57,000/- was awarded towards compensation with interest at 9% per annum from the date of petition till realization, as against the claim of Rs.1,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for brevity "the Act") for the injuries sustained by the 1st respondent/petitioner.

2. The appellants are respondent Nos.2 and 3, while respondent No.1 is the petitioner and respondent No.2 is the driver of the jeep bearing No.AP H 5922, in O.P.No.949 of 2001 before the Tribunal.

3. For the sake of convenience, in this judgment, the parties are referred to as they are arrayed in O.P.No.949 of 2001 before the Tribunal.

4. The facts, in brief, are that on 16.04.1999, at about 7.00 p.m., while the petitioner was proceeding on his bicycle on the left side of the road and after he crossed Venkatalakshmi theatre and reached Railway Bridge, the 1st respondent-driver of the offending jeep bearing No.AP H 5922 belonging to respondent Nos.2 and 3, driven in a rash and negligent manner and at high speed, dashed against the cycle of the petitioner, due to which he received

injuries and immediately he was taken to the Government Hospital, Vizianagaram, for treatment and, therefore, sought a compensation of Rs.1,50,000/- towards compensation.

5. The 1st respondent – driver of the offending jeep filed counter disowning negligence attributed to him, contending that that the petitioner himself got confused and came in front of the jeep, that he was having a valid driving licence and hence prayed to dismiss the petition against him. Respondent No.3 filed counter opposing the claim, which has been adopted by respondent No.2 by filing a Memo to that effect, stating that he is neither owner nor insurer of the offending vehicle and that the petition is bad for mis-joinder of proper parties and hence sought to dismiss the petition.

6. Basing on the pleadings, the Tribunal has framed the following three issues in order to fix the liability and determine the compensation:

- (1) Whether the accident occurred due to the rash and negligent driving of the jeep bearing No.AP H 5922 by R.1 driver?
- (2) Whether the petitioner is entitled for any compensation from any of the respondents; if so, from which of the respondents?
- (3) To what relief?

7. During enquiry, the petitioner examined himself as P.W.1, besides examining Dr. K.V. Murali Mohan as P.W.2, and got marked Exs.A-1 to A-4, besides marking Exs.X-1 and X-2, which are case sheet and X-ray, respectively. On behalf of the respondents, the 1st respondent was examined as R.W.1 and no documents were marked.

8. On appraisal of evidence on record, on issue No.1, by disbelieving the version of R.W.1, the Tribunal recorded a finding that the accident had taken place due to the rash and negligent

driving by the driver of the jeep. On issue No.2, taking into consideration the income of the petitioner, notionally, at Rs.15,000/- per annum, and the partial permanent disability sustained by the petitioner at 20% as per Ex.A.9 disability certificate, and as per the evidence of P.W.2 – Medical Officer attached to the Government Hospital, Vizianagaram and Ex.X-1 case sheet and also by taking into consideration the multiplier ‘16’ applicable to the age group of the petitioner as 40 years, arrived at Rs.48,000/- (Rs.15,000/- x 16 x 20%) towards loss of earning capacity, besides awarding Rs.6,500/- towards pain and suffering, Rs.2,500/- towards transport to hospital, medicines and extra nourishment, and thus, granted a total compensation of Rs.57,000/- with interest @ 9% per annum against respondent Nos.1 to 3, by order and decree dated 26.08.2003.

9. The aforesaid order is under challenge in the present Civil Miscellaneous Appeal by respondent Nos.2 and 3, contending in the grounds of appeal that the Tribunal, without there being any concrete material, had taken the age of the petitioner as 40 years and went wrong in determining the compensation and hence sought to set aside the impugned order.

10. Heard Sri S. Ganesh, learned Assistant Government Pleader for Arbitration, appearing for the appellants/respondent Nos.2 and 3, as well as Sri Venkateswara Rao Gudapati, learned counsel for the 1st respondent/petitioner. An endorsement is made by the appellants to the effect that the 2nd respondent herein, who is shown as respondent No.1 in O.P., is not a necessary party in the appeal. Perused the impugned order and the material on record.

11. The finding recorded by the Tribunal that due to rash and negligent driving by the driver of the offending jeep the accident had occurred, resulting injuries sustained by the petitioner, is well reasoned and based on appreciation of evidence and, therefore,

the same does not warrant any interference. Further, the amount of Rs.48,000/- arrived at by the Tribunal towards loss of future earnings of the petitioner or, in other words, towards partial permanent disability, certainly requires interference, for the reason that the multiplier factor '16' was applied, instead of applying the applicable multiplier factor '15' as per the decision of the Hon'ble Apex Court in SARLA VERMA & OTHERS V. DELHI TRANSPORT CORPORATION AND ANOTHER^[1], since the petitioner was aged 40 years as on the date of accident. Therefore, by applying the multiplier '15' to the estimated income of the petitioner at Rs.15,000/- per annum with 20% partial permanent disability, the loss of earning capacity is worked out to Rs.45,000/-, instead of Rs.48,000/- awarded by the Tribunal, while maintaining the amounts granted by the Tribunal on other heads. Thus, the petitioner is entitled to a total compensation of Rs.54,000/- as against the amount of Rs.57,000/- granted by the Tribunal. So far as interest granted by the Tribunal @ 9% per annum is concerned, the same is required to be reduced to 7.5% per annum in view of the decision of the Apex Court in RAJESH AND OTHERS V. RAJBIR SINGH AND OTHERS^[2].

12. Accordingly, the Civil Miscellaneous Appeal is allowed in part, reducing the amount of compensation from Rs.57,000/- to Rs.54,000/- (Rupees fifty four thousand only) with interest at 7.5% per annum from the date of petition till realisation, while confirming the finding recorded by the Tribunal as regards the apportionment of compensation between the respondents. No order as to costs.

13. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

09.02.2016.
Msr

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- [\[1\]](#) (2009) 6 Supreme Court Cases 121
[\[2\]](#) 2013 ACJ 1403