

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

M.A.C.M.A.No.2269 of 2005

JUDGMENT:

Heard learned counsel for the appellant. None appeared for the respondents on 18.01.2016 and on 22.01.2016. Even today, none appears for the respondents.

2. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

3. This appeal is filed by the injured, who filed O.P.No.1572 of 1999 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-IV Additional District Judge, Visakhapatnam, claiming compensation of Rs.10,00,000/- for amputation of left leg below knee in a motor accident that occurred on 25.03.1999.

4. It was alleged in the petition that on 25.03.1999 the claimant along with his friend, who is pillion rider were going on his motor cycle from Naval Dockyard to Malkapuram and when they reached near INS Kalyani Hospital, one naval bus bearing No.96P 0105414-Y, driven by its driver in a rash and negligent manner at a high speed, dashed against the motor cycle. He sustained grievous injury to his left leg and other multiple injuries all over his body and he was immediately taken to INS Kalyani Hospital for treatment and there his left leg was amputated below the knee.

5. The claimant was aged 24 years on the date of accident and was working as Marine Engineer in INS Sindhu Dhvaj, Fleet Mala Office in Visakhapatnam and drawing salary of Rs.10,844/-.

6. The petitioner's claim was opposed by the 2nd respondent stating that while trying to avoid the horde of buffaloes on the road, the petitioner himself dashed against the bus and the accident thus occurred due to his negligence only. It is further stated that the petitioner was treated in the nearby naval hospital on free of cost under the command of the 2nd respondent and he was also paid full pay and allowances at Government expenses during the period of treatment. At the time of accident, the petitioner was in the rank of Marine Engineer-I and the disability sustained by him could not effect his promotion as the promotion of an individual is based on the professional competency

and conduct.

7. The Tribunal framed the following issues for consideration:

- 1) Whether the petitioner sustained injuries in the motor accident occurred due to the rash and negligent driving of the vehicle bearing No.96P 0105414 (Naval bus) by its driver?
- 2) Whether the petitioner is entitled to compensation, if so, to what amount and from whom?
- 3) To what relief?

8. The petitioner examined P.Ws.1 and 2 and got marked Exs.A1 to A8. The driver of the vehicle was examined as RW.1 and no documents were marked on behalf of the respondents.

9. In respect of the first issue, the Tribunal held that the accident occurred due to rash and negligent driving of the bus by the 1st respondent and the petitioner sustained injuries in the said accident. The Tribunal awarded an amount of Rs.21,688/- towards loss of earnings for a period of two months, Rs.1,00,000/- towards permanent disability, Rs.50,000/- towards compensation for pain and suffering, Rs.2,00,000/- towards loss of earning power along with interest at 9% per annum by its award dated 01.04.2005. Seeking enhancement of the said amounts, the present appeal is filed.

10. In the instant case, there is no dispute with regard to the rank of the petitioner, his salary and amputation of left leg below knee. In the circumstances, this Court has to consider whether the award passed by the Tribunal was just and proper in the circumstances of the case or not?

11. The petitioner stated that on the date of accident, he was working as Marine Engineer in INS Sindhu Dhwaj and he used to get Rs.3,500/- per month as additional allowance and due to the accident, he was found unfit to work in submarine and posted at Naval Base, Bombay. Thus, he lost the additional allowance of Rs.3,500/-. As per Ex.A.5, pay slip, the petitioner was drawing an amount of Rs.10,844/-, including the said allowance of Rs.3,500/-

and after the accident he was drawing only Rs.6,113/-. It cannot be said that the petitioner would be continued in the submarine forever. However, considering the age of the petitioner, the petitioner has bright prospects in the Indian Naval Service and hence, the salary of Rs.6,113/- drawn by him needs enhancement by 50% at least. As per Ex.A.4, disability certificate, which was issued by the Colonel of the Artillery Centre, Pune, the petitioner sustained 60% disability which is permanent in nature. But in view of the counter affidavit, the said disability does not come in the way of the petitioner being promoted to the higher rank and 60% disability cannot be construed as a loss of earning capacity. The movement of the petitioner is definitely restricted and he would not be placed in areas where a normal person is placed. In the circumstances, taking the disability into consideration, it can safely be concluded that due to the accident, the petitioner lost at least 25% of the earning capacity. If the same is taken into consideration applying multiplier '18' to his age and future prospects, the compensation can be arrived at Rs.4,86,000/-. The petitioner was hospitalised for a period of two months and the medical expenses were borne out by the 2nd respondent, but the petitioner must have underwent pain and suffering during the accident and hospitalisation for which, an amount of Rs.50,000/- can be awarded, which was rightly awarded by the Tribunal. For the amputation of left leg below knee, the petitioner is entitled for an amount of Rs.2,00,000/-. Thus, this Court feels that an amount of Rs.7,36,000/- would be just compensation keeping in view of the earning capacity, rank and disability suffered by the petitioner.

12. With the above directions, the appeal is allowed in part enhancing compensation of Rs.3,71,688/- awarded by the Tribunal to Rs.7,36,000/- with interest @ 9% per annum from the date of petition till the date of realisation. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

A.RAMALINGESWARA RAO,J

DATED: 22.01.2016

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M.A.C.M.A.No.2269 of 2005

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