

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1653 of 2009

JUDGMENT :

The instant Civil Miscellaneous Appeal is preferred by the petitioner, aggrieved by the judgment and decree dated 02.03.2006, passed in M.V.O.P.No.506 of 2004 by the Chairman, Motor Accident Claims Tribunal-cum-IV Additional District Judge, Kurnool (for brevity "the Tribunal"), whereby and whereunder a sum of Rs.21,850/- was awarded towards compensation with interest @ 7.5% per annum, as against the claim of Rs.1,00,000/-, laid under Sections 140 and 166 of the Motor Vehicles Act, 1988, for the injuries sustained by him in a road accident that occurred on 05.05.2004, seeking enhancement of compensation.

2. The appellant herein is petitioner and the respondent - erstwhile A.P. State Road Transport Corporation (for brevity "the Corporation"), represented by its Managing Director-cum-Chairman, Hyderabad, is respondent, in M.V.O.P.No.506 of 2004. For the sake of convenience, the parties are referred to as they are arrayed in M.V.O.P.No.506 of 2004 before the Tribunal.

3. The fact situation would show that on 05.05.2004, at about 10.00 hours, the petitioner along with 40 other passengers was travelling in a bus bearing No.AP 11Z 2379 belonging to Adoni Depot of the respondent – Corporation to go to Adoni and when the said bus was proceeding towards Adoni, on N.H.No.7 road, and reached K.M.No.201, outskirts of Puttur village, since the driver of the bus drove it in a rash and negligent manner at high speed, the right front tyre of the bus was burst and the driver lost control over

it and the bus dashed against the telephone room, due to which the petitioner's left hand and right collarbone were fractured. Immediately, the petitioner was shifted to the Government General Hospital, Kurnool, for treatment, where he was treated as an inpatient for 20 days and incurred Rs.20,000/- towards medical expenses. Stating that he was working as a black-smith, earning Rs.150/- per day, the petitioner sought a sum of Rs.1,00,000/- towards compensation for the injuries sustained by him.

4. The respondent – Corporation opposed the claim by filing counter.

5. The Tribunal, having framed four issues, basing evidence, both oral and documentary, available on record, decided issue Nos.1 and 2 in favour of the petitioner. So far as issue No.3 i.e., determination of compensation, is concerned, the Tribunal has taken the disability sustained by the petitioner at 10%, though, no Disability Certificate to that effect was issued by P.W.2 – Doctor, who treated the petitioner, however, basing on the evidence of P.W.2, taken the age of the petitioner as 50 years and his earnings at Rs.50/- per day or Rs.1,500/- per month, and by applying the multiplier factor '11', arrived at Rs.19,800/- towards loss of future earning capacity. Besides the same, the Tribunal granted a sum of Rs.750/- ($\text{Rs.50/-} \times 15 = 750/-$) towards loss of earnings, as he was treated as an inpatient for a period of 15 days, and a sum of Rs.1,300/- towards medical expenses, as per Ex.A-2, bunch of medical bills, and thus, arrived at a total compensation of Rs.21,850/- with interest @ 7.5% per annum from the date of petition till realisation. Hence, the present Civil Miscellaneous Appeal seeking enhancement of compensation.

6. Heard Sri J. Janaki Rami Reddy, learned counsel for the petitioner. None appears for the respondent – Corporation.

7. Perused the impugned judgment and evidence available on record, both oral and documentary.

8. Sri J. Janaki Rami Reddy, learned counsel for the petitioner, submits that the Tribunal has not properly appreciated the evidence on record in assessing the earning capacity of the petitioner, earlier to the accident and the loss of earnings subsequent to the accident.

9. Admittedly, no Disability Certificate was issued by P.W.2 – Doctor, who treated the petitioner. He, only asserts that the petitioner sustained 20% disability, without elaborating the restriction of movements of the particular arm, and stated that the petitioner could not attend heavy labour work due to the disability sustained by him. That was the reason why the Tribunal has taken 10% disability, by reducing it from 20%, which finding cannot be disturbed. However, the income of the petitioner at Rs.1,500/- per month taken by the Tribunal, which is, of course, based on guess work, is not reasonable and, therefore, treating the income of the petitioner at Rs.2,000/- per month, and when calculated the same with 10% disability, by applying the appropriate multiplier factor '13', as per the table formulated by the Hon'ble Apex Court in **Sarla Verma & others v. Delhi Transport Corporation and another**^[1], the loss of future earning capacity of the petitioner would work out to Rs.31,200/-. The amount of Rs.1,300/- granted by the Tribunal towards medical expenses is maintained. The Tribunal has not granted any amounts towards pain and suffering; extra-nourishment; and temporary loss of earnings. Therefore,

towards the said accounts, a sum of Rs.10,000/-, Rs.5,000/- and Rs.4,000/-, respectively, are awarded. Thus, the petitioner is entitled to a total compensation of Rs.51,500/- with interest @ 7.5% per annum on the enhanced amount also.

10. Accordingly, the Civil Miscellaneous Appeal is allowed in part, enhancing the amount of compensation from Rs.21,850/- to Rs.51,500/- (Rupees fifty one thousand five hundred only) with interest @ 7.5% per annum on the enhanced amount also, which was the rate of interest awarded by the Tribunal on the amount granted by it. No order as to costs.

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

JUSTICE A. SHANKAR NARAYANA

11.08.2016.

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[\[1\]](#) (2009) 6 Supreme Court Cases 121