

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2018 of 2009

JUDGMENT :

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act") is preferred by the appellant - respondent No.2 - Oriental Insurance Company Limited (for brevity "the insurer"), aggrieved by the order and decree dated 13.04.2007, passed in M.V.O.P.No.132 of 2003 by the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Chittoor District (for brevity "the Tribunal"), whereby and whereunder a compensation of Rs.4,18,000/- was awarded, as against the claim of Rs.5,00,000/- laid by the 1st respondent - petitioner, under Section 166 of the Act, towards the injuries and 15% permanent disability sustained by him in a motor accident that occurred on 23.02.2002 at 11.00 p.m., near Katpadi Panchayat Board Street Junction, Katpadi, on the main ground that the compensation awarded is excessive and arbitrary.

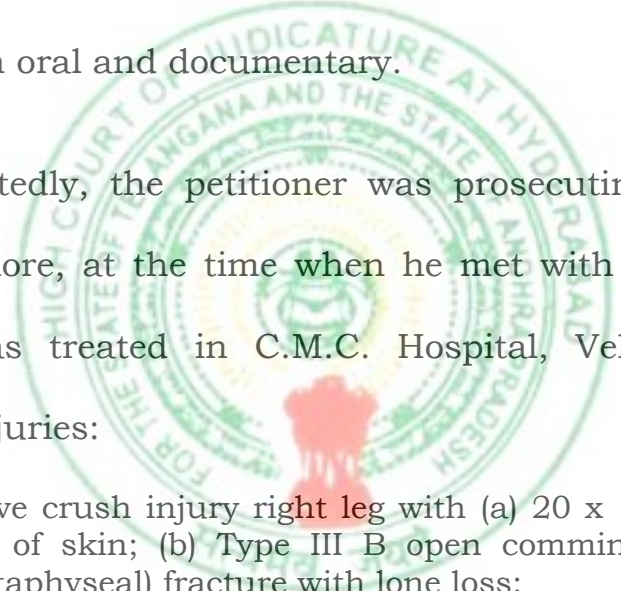
2. The appellant herein is respondent No.2, respondent No.1 herein is petitioner, and respondent No.2 herein - owner of lorry bearing No.TN-28A-3899 is respondent No.1, in M.V.O.P.No.132 of 2003. For the sake of convenience, the parties are referred to as they were arrayed in the No.132 of 2003, before the Tribunal.

3. The facts situation as to the manner in which the accident had occurred is not disputed by the contesting parties. Hence, the same need not be gone into again.

4. Heard Sri M. Satish Reddy, learned Standing Counsel for the appellant – insurer, and Sri K. Jaya Kumar, learned counsel for respondent No.1 – claim petitioner. Though, 2nd respondent – owner is served, none appears for him.

5. Perused the order under challenge and evidence on record, both oral and documentary.

6. Admittedly, the petitioner was prosecuting Final Year B.E. at Vellore, at the time when he met with the accident. and he was treated in C.M.C. Hospital, Vellore, for the following injuries:

- 
- “1. Massive crush injury right leg with (a) 20 x 15 cm anterior degloving of skin; (b) Type III B open comminuted proximal tibial (metaphyseal) fracture with bone loss;
 - 2. Cervical spine fracture – stable C3-level;
 - 3. Degloving injury of right fore-arm, volar aspect 10 cm x 7 cm.”

7. Dr. Alfred J. Daniel, Medical Officer of C.M.C. Hospital, Vellore, who was examined as P.W.2, would assert to the above injuries and the procedure undergone by the petitioner, which include as many as 8 surgical interventions time and again undergone by the petitioner over a period of 2 years, and also speaks about the great inconvenience, to which the

petitioner was put, besides dislocation of his Engineering Degree course.

8. A perusal of the order under challenge would show that the Tribunal has granted a sum of Rs.50,000/- towards pain and suffering for three grievous injuries; Rs.2,00,000/- towards medical expenses, attendant charges, extra-nourishment, transport and hospital expenses for 2 years; Rs.15,000/- towards loss of earnings for a period of 3 months @ Rs.5,000/- per month; and Rs.1,53,000/- towards future loss of earnings, which was determined basing on the structural formula by taking the notional income of the petitioner at Rs.5,000/- per month or Rs.60,000/- per annum, multiplied by the multiplier factor '17', which is applicable for the age group of petitioner between 20 and 25 years, and for 15% disability, the petitioner is entitled to loss of future earnings at Rs.1,53,000/- ($\text{Rs.60,000/-} \times 17 \times 15/100 = \text{Rs.1,53,000/-}$), basing on the evidence of P.W.2. Thus, the petitioner was awarded a total compensation of Rs.4,18,000/-.

9. There is no need to refer to the evidence of P.W.2 and the elaboration made by the Tribunal in arriving at the said compensation, treating it as just and adequate, itself is sufficient.

10. It is no doubt true, learned Standing Counsel for the appellant – insurer resisted the compensation awarded, more particularly, the notional income taken by the Tribunal at Rs.5,000/- per month for a student, who was prosecuting his studies and determination of future loss of earnings at Rs.1,53,000/-, on the main ground that there was cosmetic disability, but not the disability otherwise. But, still, when kept in view, 2 years pause occasioned in prosecuting the studies by the petitioner, who is in Final Year of his B.Tech., course and 8 surgical interventions undergone by him, besides continuous treatment undergone by him, as per the evidence of P.W.2, the amounts granted by the Tribunal against each head are just and reasonable and the same cannot, at all, be construed as, either excessive or arbitrary.

11. In fact, the medical expenses itself appear to be Rs.2,00,000/-, but, somehow, the Tribunal joined some other heads and granted the said amount. Since, no appeal is preferred by the claimant, nothing more can be said on this aspect.

12. Therefore, there is no other option, except to dismiss the appeal as devoid of merits, confirming the order dated 13.04.2007 passed by the Tribunal.

13. Accordingly, the Civil Miscellaneous Appeal is dismissed. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE A. SHANKAR NARAYANA

22.09.2016.
Msr



HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.2018 of 2009



22.09.2016
Msr