

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.CMA.No.1010 OF 2012

JUDGMENT:

The present appeal is preferred by the petitioner in M.V.O.P.No.475 of 2002 on the file of Chairman, Motor Accidents Claims Tribunal – cum – District Judge, Chittoor, dissatisfied with the award of Rs.1,08,500/- as compensation, by order and decree, dated 18.10.2006, passed in the said O.P., as against the claim of Rs.4,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988, on the main ground that the amount awarded by the Tribunal is very meagre and lacks appreciation of evidence on record in proper perspective.

2. The appellant is petitioner, while respondent Nos.1 and 2, who are the owner and insurer of the offending vehicle, respectively, are respondent Nos.1 and 2, and respondent No.3, to which the offending vehicle was hired, is respondent No.3 in the O.P. before the Tribunal.

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

4. So far as the facts are concerned, on 04.09.2001 at about 04:20 PM, while the petitioner was riding pillion on a TVS 50 Moped bearing registration No.TN-07-Z-6133, driven by one P. Muralidhar, and proceeding towards C.M. Kandriga Village, since the driver of

bus bearing registration No.AP-03-U-3082 coming in opposite direction driven the bus in a rash and negligent manner, dashed the TVS 50 Moped, due to which, the petitioner sustained Type-IIIA open fracture to both bones of his right leg, open knee injury on the right side with loss of ligamentum patella and loss of anterior soft tissue, and 35 x 10 cm. degloving injury to the left leg. Immediately, he was taken to C.M.C. Hospital, Vellore, where he has undergone treatment as inpatient from 04.09.2001 to 09.10.2001 and spent Rs.75,000/- towards treatment and incidental charges. The petitioner, claiming that only due to the rash and negligent driving of the driver of respondent No.1's bus, the accident had taken place and that the bus was insured with respondent No.2 and hired to respondent No.3, sought a sum of Rs.4,00,000/- as compensation from respondent Nos.1 to 3.

5. Respondent No.1, owner of the bus, remained *ex parte* before the Tribunal.

6. Respondent No.2 – Insurer filed counter denying the pleas put forth by the petitioner and attributed negligence to the rider of TVS 50 Moped and also alleged that the amount sought for by the petitioner is highly excessive.

7. Respondent No.3 also filed counter refuting the allegations levelled in the claim petition and pleaded that the claim itself is bad for non-joinder of the owner and insurer of the TVS 50 Moped,

besides alleging that the amount claimed by the petitioner is highly excessive and exorbitant.

8. Based on the rival pleadings, the Tribunal has framed four issues in order to determine the liability as well as the compensation to which the petitioner is entitled.

9. During enquiry, petitioner, besides examining himself as PW.1, examined Dr. R. Shanmugha Sundaram, who issued Ex.A8 - Disability Certificate, dated 16.01.2003, assessing the disability at 35%, having examined the petitioner on 16.01.2003, as PW.2, and Dr. Keny David from Vellore as PW.3, in order to prove the injuries and medical expenses met by the petitioner while undergoing treatment in C.M.C. Hospital, and marked Exs.A1 to A14 to substantiate the claim laid. On behalf of respondent No.2 – Insurance Company, its Senior Assistant was examined as RW.1, but no documents were filed.

10. The Tribunal, on overall assessment of the evidence on record, held issue Nos.1 and 2 in favour of the petitioner.

11. On issue No.3, though, the Tribunal analysed the evidence of PW.2 referring to the injuries sustained by the petitioner, as described in Ex.A8, still, did not record any positive finding as to either accepting or rejecting Ex.A8 – Disability Certificate issued by PW.2 assessing permanent disability at 35%, but, however, basing on

the evidence of PW.3 and the nature of injuries described in Ex.A3, granted a sum of Rs.40,000/- towards first injury, Rs.20,000/- towards second injury, Rs.4,000/- towards third injury, besides granting Rs.39,500/- towards medicines and treatment, basing on Ex.A5 – Bunch of Medical Bills, and Rs.5,000/- towards extra nourishment, placing reliance on the decision of this Court in **Shivaram Coudhary v. APSRTC**¹ and, thus, granted a total sum of Rs.1,08,500/- with interest at 9% per annum.

12. It is the aforesaid order which is under challenge in the instant appeal mainly on the ground that the Tribunal has not properly appreciated the evidence on record and that it did not follow the principles of law governing award of compensation.

13. Heard Sri S.V. Muni Reddy, learned counsel for the appellant, and Sri A. Rama Rao, learned Standing Counsel for respondent No.3. No representation for respondent No.2 – Insurance Company. Service on respondent No.1 – owner of the bus, though, not completed, still, in the connected case preferred by the Insurance Company against the very same order and decree under challenge, service was completed on the owner of bus.

14. Though, in ground No.4, it is stated by the petitioner - appellant, on assumption, that the Tribunal apportioned liability taking into consideration the rash and negligent driving of the driver of

¹ 1996 (1) ALT 252

respondent No.1's bus, and there is no contributory negligence on the part of rider of TVS 50 Moped, it is so projected by the appellant that in view of the same, the Tribunal ought to have awarded the claim in toto, which is not so, and the learned counsel for appellant would fairly submit that by mistake such a ground is agitated.

15. The short point that requires consideration is whether the amount awarded by the Tribunal is based on well established principles of law, and whether the amount awarded is just and reasonable or whether the appellant – petitioner is entitled to any enhancement of compensation.

16. At the outset, it is to be observed that, as already adverted to in the above, the Tribunal, despite referring to the evidence of PW.2 and the assessment he made as regards the partial permanent disability at 35% sustained by the petitioner, did not record a finding either accepting the partial permanent disability or rejecting Ex.A8 – Disability Certificate issued by PW.2. It is not in dispute that the petitioner was a private electrician by profession, as could be seen from Ex.A12 proving that he has passed the requisite course. The Doctor, PW.2, as seen from his evidence, was practising as an orthopaedic surgeon at Vellore, but he does not assert that he was working in C.M.C. Hospital, Vellore. Even Ex.A8 issued by him on 16.01.2003, does not indicate that he was connected with C.M.C. Hospital. On the other hand, it shows that he was just an orthopaedic

surgeon at Vellore and Ex.A8 was issued on his own letter head. However, he has elaborately given the degrees of restriction of right leg, right knee and left leg, apportioning the disability at 20%, 10% and 5%, respectively. Thus, keeping in view, the apportionment of the restriction of movements of the limbs and the details thereof, besides nothing is forthcoming in his cross-examination to condemn that part of his chief examination in the direction of assessing the disability at 35%, certainly, the Tribunal was not right in not tendering any finding at all. Therefore, the percentage of disability is taken as 35% since the injuries, which PW.2 has examined, are the very same injuries which PW.3 has observed, when he treated PW.1 in C.M.C. Hospital, Vellore.

17. Turning to the evidence of PW.3, he has given details of the injuries sustained by the petitioner, fixing of steel rods to the right leg and issue of Medical Bills under Ex.A5 from their hospital. His further assertion is, that the petitioner sustained shortening of two inches in right leg, the consequence being, the petitioner would be limping slightly, which, of course, affects his gait, and underwent multiple surgical interventions. Though, he was cross-examined, nothing is brought out, to show that there could be complete recovery. Thus, the very shortening of two inches of his right leg with restrictions is sufficient enough to strengthen the partial permanent disability assessed by PW.2.

18. Coming to what would be the loss of future earning capacity of the petitioner in view of the disability sustained by him, there is no documentary evidence except Ex.A12 to arrive at his definite income. Though, the petitioner claimed that he was an agriculturist, he has not filed any documents to prove either that he owns lands or he has been cultivating the lands on lease. So, taking into consideration that his income would be around Rs.2,500/- per month, on guess work, and his age as 40 years, by applying multiplier '15' and the partial permanent disability at 35%, the loss of future earning capacity works out to Rs.1,57,500/-. The Tribunal has granted a sum of Rs.40,000/-, Rs.20,000/- and Rs.4,000/- towards the three injuries, respectively, but it has not resorted to structural formula basing on the partial permanent disability. Therefore, as against Rs.64,000/- granted by the Tribunal towards the three injuries, an amount of Rs.1,57,500/- is granted towards loss of future earning capacity.

19. The amount of Rs.39,500/- granted by the Tribunal towards treatment and medicines covered by Ex.A5 is maintained as it is proved through the evidence of PW.3. Towards pain and suffering, the petitioner is entitled to a sum of Rs.30,000/-, keeping in view, the injuries sustained by him. The amount of Rs.5,000/- granted towards extra nourishment is maintained. Keeping in view, the nature of injuries as well as the inconvenience to which the petitioner was put

during the period of treatment as well as post operative period, as he would have required attendant for his mobility, a sum of Rs.10,000/- is granted. Further, since he was treated in C.M.C. Hospital, Vellore, a sum of Rs.5,000/- is granted towards transport charges. The petitioner is also entitled to a sum of Rs.15,000/- towards loss of temporary earnings. Thus, the petitioner is totally entitled to Rs.2,62,000/-.

20. So far as interest is concerned, the Tribunal has granted the same at 9% per annum. The same rate of interest is maintained on the amount of Rs.1,08,500/- granted by the Tribunal and on the enhanced amount, the petitioner is entitled to interest at 7.5% per annum, in view of the decision of the Honourable Supreme Court in **Rajesh and others v. Rajbir Singh and others**².

21. Accordingly, the appeal is allowed in part enhancing the compensation from Rs.1,08,500/- to Rs.2,62,000/- with interest at 9% per annum on the amount awarded by the Tribunal and at 7.5% per annum on the enhanced amount.

22. Miscellaneous Petitions, if any, pending in this appeal, shall stand closed. There shall be no order as to costs.

A. SHANKAR NARAYANA, J

August 09, 2016.
MD

² (2013) 9 SCC 54