

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.1324 of 2009

JUDGMENT :

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 (for brevity "the Act"), is preferred by the petitioner-appellant, aggrieved by the judgment and decree dated 24.08.2005, passed in O.P.No.1997 of 2003 by the Chairman, Motor Accidents Claims Tribunal (District Judge), Nizamabad District (for brevity "the Tribunal"), whereby and whereunder, a sum of Rs.3,02,900/- was awarded towards compensation with interest @ 9% per annum, as against the claim of Rs.12,00,000/-, laid under Section 166 of the Act, for the injuries sustained by him in a motor accident, seeking enhancement of compensation.

2. The appellant herein is the petitioner; respondent No.1 – owner of the Auto bearing No.AP 25U 3711 is respondent No.1; and respondent No.2 - National Insurance Company Limited is respondent No.2, in O.P.No.1997 of 2003. For the sake of convenience, the parties are referred to as they are arrayed in O.P.No.1997 of 2003 before the Tribunal.

3. The facts would show that on 17.05.2003, while the petitioner along with one M. Bhoomaiah was coming on a cycle from Malkapoor side towards Gundaram village and

when he reached the said village, an Auto bearing No.AP 25U 3711, driven by its driver at high speed and in a rash and negligent manner, came from Gundaram side, due to which the driver of the Auto lost control over it and dashed the petitioner and M. Bhoomaiah, due to which the petitioner along with M. Bhoomaiah fell down and the auto ran over them, which resulted in the petitioner sustaining multiple fractures, crush injuries to right leg, loss of two teeth, other teeth became loosened, fracture injury to right thigh, besides multiple and grievous injuries to all over the body. Immediately, he was shifted to the Government Headquarters Hospital, Nizamabad, and then he was shifted to Sri Venkateshwara Hospital, Nizamabad, where he was treated as an inpatient. The petitioner states that even on the date of filing of the claim petition, he was still suffering from pain and undergoing treatment. He claims that he was earning Rs.15,000/- per month by doing Mason work, contractor of buildings and agriculture and on account of the fracture injuries to right thigh, skull, ribs, he sustained permanent disability, unable to walk and lost his total earning power and, therefore, sought a compensation of Rs.12,00,000/-.

4. Both respondent Nos.1 and 2 filed separate counters, denying the petition averments.

5. The 1st respondent – owner of the offending vehicle filed counter stating that the offending vehicle was insured with

the 2nd respondent – insurer vide Policy No.49085 and the said policy was valid from 13.11.2002 to 12.11.2003. Hence sought to dismiss the claim petition against him, as the 2nd respondent – insurer is obligated to indemnify him.

6. Though, the 2nd respondent – insurer filed counter by raising various contentions, no specific plea as regards violation of any of the terms and conditions of the policy by the driver of the offending Auto was pleaded.

7. Basing on the pleadings, the Tribunal framed three issues about the responsibility for the accident.

8. During enquiry, besides examining himself as P.W.1, the petitioner got examined Dr. V. Akhilesh, Medical Officer, as PW.2, and marked Exs.A-1 to A-9, besides marking Exs.C-1 and C-2, which are disability certificates, on his behalf. On behalf of the 2nd respondent – insurer, none were examined, except marking Ex.B-1, copy of Insurance Policy, by consent.

9. The Tribunal, on appraisal of evidence on record, recorded a finding on issue No.1 in favour of the petitioner. On issue Nos.2 and 3, the Tribunal, by observing that the petitioner's right leg was amputated below the knee, loss of two upper teeth, non-concussional head injury and abrasion on the right thigh, as per Ex.A-2 – Wound Certificate, supported by Exs.A-3 and A-4, which are Medical Bills and

prescription, respectively, granted a sum of Rs.50,000/- towards the disability, besides a sum of Rs.25,000/- towards pain and suffering. The Tribunal worked out the loss of earning capacity by taking the percentage of disability sustained by the petitioner at 50% and his earnings at Rs.3,000/- per month, but, somehow, deducted 1/3rd therefrom towards personal expenses, and applied the multiplier factor '17' as per II Schedule to Section 163-A of the Act, by taking the age of the petitioner as 35 years, and arrived at a sum of Rs.2,04,000/-, besides granting a sum of Rs.23,900/- towards medical expenses as per Ex.A-3 Medical Bills, and thus, arrived at a total compensation of Rs.3,02,900/-, with interest @ 9% per annum from the date of petition till the date of realisation, by fixing responsibility jointly and severally on respondent Nos.1 and 2. Aggrieved thereby, the petitioner has preferred the present appeal.

10. Heard Sri B. Venkateshwar Varanasi, learned counsel for the appellant/petitioner. Though, the 2nd respondent – insurer is served with notice, none appears for it. In the grounds of appeal, since it is stated that the 1st respondent – owner of the offending vehicle is not a necessary party, his absence is of no consequence in adjudicating the present appeal.

11. Perused the order under challenge and evidence available on record.

12. A thorough examination of the evidence on record would show that the amount of Rs.50,000/- awarded by the Tribunal towards disability is not in accordance with the normal principle. The Tribunal has evaluated the medical evidence by taking partial permanent disability sustained by the petitioner at 50%, and by applying the structural formula, calculated the loss of earning capacity of the petitioner. Be that as it may, since there is no challenge as regards the amount awarded by the Tribunal towards disability, the same is maintained. Keeping in view, the amputation of right leg below the knee, even the amount of Rs.25,000/- granted towards pain and suffering undergone by the petitioner is also maintained.

13. So far as determination of loss of earning capacity of the petitioner is concerned, though the Tribunal has taken the earnings of the petitioner at Rs.3,000/- per month, it went wrong in deducting 1/3rd towards personal expenses, as the instant case is not a case of death, where the living expenses have to be apportioned from the earnings and it is only a case of injuries. Therefore, that finding is modified to that of monthly earnings of the petitioner at Rs.3,000/- or Rs.36,000/- per annum being taken for the purpose of applying the structural formula, and when the same is done by taking the multiplier factor '16', as the same is the relevant multiplier for the age group of persons between 31 and 35

years, as per the table formulated by the Apex Court in **Sarla Verma & others v. Delhi Transport Corporation and another**¹, the loss of earning capacity of the petitioner works out to Rs.2,88,000/- ($\text{Rs.36,000/-} \times 50/100 \times 16 = 2,88,000/-$). The amount of Rs.23,900/- granted by the Tribunal towards medical expenses is maintained. As no amount was granted by the Tribunal towards extra-nourishment, a sum of Rs.10,000/- is granted under that head. Further, @ Rs.2,000/- per month, for six months, a sum of Rs.12,000/- is granted towards attendant charges. At Rs.3,000/- per month, for six months, a sum of Rs.18,000/- is granted towards temporary loss of earnings, and Rs.2,000/- is granted towards transportation charges. Thus the petitioner is entitled for a total compensation of Rs.4,28,900/- ($\text{Rs.50,000/-} + \text{Rs.25,000/-} + \text{Rs.2,88,000/-} + \text{Rs.23,900/-} + \text{Rs.10,000/-} + \text{Rs.12,000/-} + \text{Rs.18,000/-} + \text{Rs.2,000/-} = \text{Rs.4,28,900/-}$), as against the compensation of Rs.3,02,900/- awarded by the Tribunal, with interest @ 7.5% per annum on the enhanced compensation of Rs.1,26,000/-, in view of the decision of the Hon'ble Supreme Court in **RAJESH AND OTHERS V. RAJBIR SINGH AND OTHERS**².

14. Accordingly, the Civil Miscellaneous Appeal is allowed in part, enhancing the amount of compensation from Rs.3,02,900/- to 4,28,900/- (Rupees four lakhs twenty eight

¹ (2009) 6 Supreme Court Cases 121

² 2013 ACJ 1403

thousand nine hundred only) with interest @ 9% per annum on the amount of Rs.3,02,900/- granted by the Tribunal, and @ 7.5% per annum on the enhanced amount of Rs.1,26,000/-, from the date of the petition till realization. No order as to costs.

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

JUSTICE A. SHANKAR NARAYANA

17.08.2016.
Msr



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