HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

M.A.C.M.A. No.893 OF 2005
AND
CROSS-OBJECTION (SR) No.18500 OF 2005
IN
M.A.C.M.A. No.893 OF 2005

COMMON JUDGMENT:

Respondent - erstwhile Andhra Pradesh State Road Transport Corporation (APSRTC), represented by its General Manager, Musheerabad, Hyderabad, in M.V.O.P. No.673 of 2000, on the file of Chairman, Motor Accidents Claims Tribunal - cum - IX Additional District Judge, Guntur (for short 'the Tribunal'), is the present appellant.

2. Aggrieved by the order and decree, dated 31-12-2004, in the said MVOP, whereby and where-under the Tribunal has arrived the compensation amount at Rs.1,78,989/- and deducted 10% thereof towards contributory negligence of the petitioner, the respondent Corporation preferred the instant appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act') on the ground that the Tribunal did not properly appreciate as to how it has arrived at Rs.1,02,000/- towards compensation.

3. The petitioner in MVOP, who is respondent herein, also filed Cross-Objection (SR) No.18500 of 2005

challenging the order relating to deduction of 10% from the compensation amount arrived at by the Tribunal towards his contributory negligence to the accident and also for enhancement of compensation.

4. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in MVOP before the Tribunal.

5. The facts would show that on 10-05-2000, while the petitioner was going on TVS Luna bearing registration No.ABP 7724 with rice bag to Guntur from Nagarjunapalem and when he crossed Narakoduru, an RTC bus bearing registration No.AP 9Z 9222 coming from Guntur and proceeding towards Tenali driven by its driver in a rash and negligent manner, hit him, due to which, he sustained crush injuries to his right leg, right thigh and other injuries to his person. He was shifted to Government Hospital, Guntur.

i) According to him, later he was shifted to Yasaswi Hospital, Arundelpet, Guntur, for better treatment. He claims that he was 31 years old on the date of accident, doing mobile aluminum business, earning Rs.100/- per day and he expended Rs.50,000/- towards treatment and that he has become permanently disabled and, therefore,

laid claim under Section 163 (A) of the Act, seeking compensation of
Rs.3,00,000/- from the respondent.

6. Counter was filed by the respondent opposing the claim.

7. The Tribunal has framed three issues in order to fix liability as well as negligence.

8. The petitioner examined himself as PW.1, besides examining the doctor as PW.2 and marked Exs.A-1 to A-11. On behalf of the respondent, driver of RTC bus was examined as RW.1 and marked Exs.B-1 to B-6.

9. The Tribunal having analyzed the evidence on record on issue No.1; making certain observations basing on the evidence of RW.1 and contents of Ex.B-1 - certified copy of judgment in C.C. No.306 of 2000, on the file of VI Additional Metropolitan Magistrate, Guntur, recorded a finding that the petitioner did contribute to the extent of 10% in taking place of accident and, accordingly, found issue No.1.

10. On issue No.2, placing reliance on the evidence of PW.2 - Medical Officer, taking the age of petitioner as 31 years, applied multiplier ‘17’ to the income of

Rs.15,000/- per annum arrived by it, and thereby worked out Rs.1,02,000/- towards compensation, which represents proposed loss of future earning capacity; besides granting Rs.20,000/- towards pain and suffering including loss of amenities in life; Rs.10,000/- towards special diet and extra nourishment; and Rs.46,989/- towards medical expenses basing on the entries in Exs.A-6 and A-7 and, thus, arrived a total compensation at Rs.1,78,989/- to which the petitioner is entitled. But, in view of the finding recorded on issue No.1 that the petitioner contributed to the accident to the extent of 10%, proportionate amount was deducted there-from and arrived at Rs.1,61,090/- as to the entitlement of petitioner towards compensation. The Tribunal also granted interest at 9% per annum thereon from the date of petition till the date of deposit.

11. It is the aforesaid order which is under challenge in the instant appeal preferred by the respondent Corporation, mainly on the ground that the Tribunal was not right in considering disability at 40% without there-being any disability certificate, and that awarding Rs.1,02,000/- is excessive and ought not to have applied multiplier factor ‘17’.

12. Whereas, in the grounds of cross-objection filed by the respondent - petitioner, it is stated that the Tribunal

went wrong in fixing 10% contributory negligence on the petitioner, and the Tribunal also failed to see that the petitioner required further treatment and, therefore, sought to grant balance amount.

13. Heard Sri K. Srinivasa Rao, learned counsel representing Sri P. Durga Prasad, learned Standing Counsel appearing for the appellant Corporation, and Sri T.S. Rayalu, learned counsel for respondent - cross-objector.

14. Perused the order and the evidence on record, both, oral and documentary, let in by the parties.

15. The evidence of Medical Officer examined as PW.2 would besides showing disability, also projects that the petitioner sustained shortening of one inch of his right leg. His evidence has been discussed by the Tribunal in paragraph No.17. It is clear from the evidence of PW.2 that the petitioner was treated as in-patient from 12-05-2000 to 28-06-2000, having undergone surgical interventions on 14-05-2000 and 15-06-2000 for the right tibia and right femur fractures with external fixtures, besides skin grafting being done. This apart, once again the petitioner has undergone surgical intervention for removal of external fixtures on tibia screws on 29-08-2000 having been admitted on 22-08-2000, in the very same hospital, as borne out, not only from the evidence of

PW.2, but also from the contents of Exs.A-5 and A-6 proved through PW.2. When viewed in that angle, certainly, the amount of Rs.20,000/- granted by the Tribunal towards pain and suffering; Rs.10,000/- towards extra nourishment and Rs.46,989/- towards medical expenses basing on entries in Exs.A-6 and A-7, are reasonable and, therefore, maintained.

16. Concerning the amount of Rs.1,02,000/- arrived at by the Tribunal by applying multiplier ‘17’, it appears that the Tribunal, somehow, went wrong as the relevant multiplier would be ‘16’, but not ‘17’ for a person aged 31 years. In that view of the matter, when multiplier ‘16’ is applied, it works out to Rs.96,000/- [Rs.15,000/- x 16 x 40%] and accordingly the said amount is reduced from Rs.1,02,000/- to Rs.96,000/-.

17. Turning to the cross-objections filed by the petitioner, the deduction of 10% towards contribution to the accident, which finding has been tendered by the Tribunal, as could be gathered from the reasoning contained in paragraph No.12, the same is not based on proper appreciation of evidence. Mere fact that the petitioner was carrying five kilograms of rice bag keeping it between himself and handle of TVS Luna, it cannot be presumed that there was negligence on the part of the petitioner, so as to contribute to the accident. In fact,

proper appreciation can only be made when scene of occurrence panchanama and rough sketch are properly examined. Ex.B-4 is rough sketch of scene of occurrence. The Tribunal, somehow, has not adverted to Ex.B-4 in proper perspective. That being so, certainly, that finding has to be upset and accordingly, the finding recorded by the Tribunal on issue No.1 to the extent that the petitioner contributed to the accident to the extent of 10% is liable to be set aside and accordingly hereby set aside, and the amount proportionately deducted by the Tribunal is also set aside and, thus, when viewed, the petitioner becomes entitled as per the award passed by the Tribunal for Rs.1,72,989/-[Rs.20,000 + Rs.10,000 + Rs.46,989 + Rs.96,000] as worked out by it .

18. The evidence of Medical Officer is clear that the petitioner requires yet another surgery for union of the right tibia since there was mal-union, and for the same, he estimated a sum of Rs.25,000/-. Certainly, that cannot be deprived irrespective of the fact whether the petitioner had undergone the said operation or not. Therefore, the amount of Rs.25,000/- is also added. Thus, in all, the petitioner is entitled to Rs.1,97,989/- [Rs.1,72,989/- + Rs.25,000/-] as compensation.

19. So far as the rate of interest is concerned, the Tribunal has granted at 9% per annum. While maintaining the same rate on the amount of Rs.1,61,090/-, granted by

the Tribunal, the interest at 7.5% per annum on the enhanced amount of Rs.36,899/- is granted as per the decision of the Hon'ble Supreme Court in **Rajesh and others v. Rajbir Singh and others**[1].

20. In the result, the appeal in MACMA No.893 of 2005 is dismissed and the Cross-Objection (SR) No.18500 of 2005 is allowed in part. Accordingly, the order and decree, dated 31-12-2004, in M.V.O.P. No.673 of 2000, passed by the Tribunal are modified enhancing the compensation to Rs.1,97,989/- (Rupees one lakh ninety seven thousand nine hundred and eighty nine) from Rs.1,61,090/- with interest @ 9% per annum on the amount of Rs.1,61,090/- (Rupees one lakh sixty one thousand and ninety) determined by the Tribunal and at 7.5% per annum on the enhanced amount of Rs.36,899/- (Rupees thirty six thousand eight hundred and ninety nine) from the date of petition till realization. No order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the appeal, stand disposed of.

A. SHANKAR NARAYANA, J

July 08, 2016.

Mgr

[1]. 2013 ACJ 1403