

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA.No.369 of 2013

JUDGMENT:

Dissatisfied with the award of Rs.23,275/- towards compensation, as against Rs.70,000/-, claimed under Section 166 of the Motor Vehicles Act, 1988, read with Rule 455 of the A.P. Motor Vehicle Rules, 1989, seeking enhancement of the same, claimant preferred this Civil Miscellaneous Appeal against the order dated 14-03-2005, in OP.No.379 of 2002, on the file of the Chairman, the Motor Accidents Claims Tribunal-cum-II Additional District Judge, Warangal.

2. The appellant herein is the petitioner, while respondent Nos.1 to 3 herein, who are driver, owner and insurer, respectively, of the Scooter bearing No.ATO 9746, 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. The facts, in brief, are that on 15.03.2001 at about 8.40 p.m., while the petitioner was going to his daughter's house situated at Nakkalagutta, by walk, one scooter bearing No.ATO 9746 of the 2nd respondent came in a high speed being driven by the 1st respondent rashly and negligently and hit the petitioner near Pathfinder's College, Hanamkonda, due to which he fell down and sustained bodily injuries and incurred huge expenditure in getting treatment apart from undergoing bodily pain, suffering, mental agony and loss of earnings. As such, he filed OP against the respondents claiming compensation of Rs.70,000/-.

5. Before the Tribunal, respondent Nos.1 and 2 who are driver and owner of the offending vehicle, remained exparte.

6. The 3rd respondent-The Oriental Insurance Company, Warangal, filed written statement disputing the averments of the claim petition and also rash and negligent driving on the part of the 1st respondent. They have also disputed the age, income, avocation and health condition of the petitioner as stated by him in the claim petition. It is also pleaded that the 1st respondent is not having valid driving license at the time of the accident and also claiming that the amount sought by the petitioner is excessive and exorbitant, requested to dismiss the petition with costs.

7. The Tribunal, in order to fix responsibility for the accident, framed three issues. During enquiry, on behalf of the petitioner, he himself was examined as PW1 and the doctor who treated the petitioner was examined as PW2 and Exs.A1 to A17 and Ex.X1 were marked. On behalf of respondents Ex.B1 is marked. Basing on the above evidence the Court below granted 25,275/- as compensation with interest at 9% p.a. thereon, from the date of petition till the date of realization with proportionate costs, making respondents 1 to 3 jointly and severally liable to pay the said compensation.

8. It is that order which is challenged in the instant appeal by the petitioner.

9. Heard learned counsel for the petitioner who contends in the grounds of appeal that the Tribunal is not right in discarding 15% to 20% disability certified by the doctor(PW2) and that the Tribunal

has not granted any compensation towards loss of future earnings, though the doctor who was examined as PW2 in his examination opined that the petitioner can not attend tailoring work properly; and that the Tribunal has not granted any amount towards future operation though he needs another surgery for removal of screws and implants which were implanted at the time of operation. Even the amounts granted under other heads are on lower side and, therefore, sought to grant balance amount.

10. On the other hand Sri Chindam Anjaneyulu, learned counsel for the 3rd respondent-Oriental Insurance Company Limited, submits that the Tribunal has granted compensation basing on the evidence available and needs no interference.

11. In the claim petition it is stated that the petitioner is 65 years, but, in the cross-examination of PW1, the petitioner stated that he is aged 71 years. PW2-the doctor who treated the petitioner, basing on Ex.A1 and X1, stated that there is restriction of movement of the right ankle joint and that the appellant is unable to do tailoring work due to 15% to 20% disability and he needs another surgery for removal of screws and plates, which were implanted at the time of operation. But, a perusal of the award passed by the Tribunal goes to show that no amount was awarded to the petitioner towards loss of future earnings and future operation. As such, since the appellant is aged 71 years, basing on the Judgement rendered by the Supreme Court in ***Sarla Verma and others v. Delhi Transport Corporation and another***^[1], the multiplier can be taken as '5' and in the claim petition it is pleaded that the petitioner was earning Rs.2,000/- per month by doing tailoring work, the disability of 20% in his earnings

comes to Rs.500/- per month. As such, the appellant is entitled to Rs.30,000/- (500x12x5) towards loss of future earnings.

12. Since the PW2-doctor, has stated that future operation is required for removal of screws, an amount of Rs.5,000/- is granted towards future operation.

13. Thus, the petitioner is entitled to a total compensation of Rs.58,275/- (Rupees fifty eight thousand two hundred and seventy five only) as against Rs.23,275/-, awarded by the Tribunal, and the same is accordingly granted. The petitioner is entitled to interest on the enhanced amount at 7.5% per annum, from the date of petition till realisation.

14. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned award passed by the Tribunal, by enhancing the compensation as stated supra. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal stand disposed of.

A.RAJASHEKER REDDY, J

25.01.2016
t k.

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