

HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY**M.A.C.M.A. No.1244 of 2017****JUDGMENT:**

Dissatisfied with the Award dated 01.02.2017 in OP.No.474 of 2013 passed by the Chairman, MACT –Cum-Additional District Judge, Nalgonda, awarding compensation of Rs.2,500/- together with interest at 8% per annum from the date of petition till the date of realization, the claimant/petitioner preferred the present appeal under Section 173 of Motor Vehicles Act.

The claimant/petitioner filed a petition under Section 166 of MV Act claiming compensation of Rs.2,00,000/- for the injuries sustained by her, in road accident that occurred on 09.6.2011 at about 12.20 pm when she along with some others were travelling in the auto bearing No. AP 24 U 6902 and when it reached near petrol bunk in the outskirts of Gopalapuram Village. It is contended that though the driver of the auto was driving the vehicle in a cautious manner, the opposite vehicle driver i.e., the driver of the tractor bearing No.AP 24 P 1469 drove the vehicle in a rash and negligent manner, without observing the traffic rules and caused the accident. In the said accident, the claimant allegedly received fracture of left leg, fracture of hip joint, fracture of both shoulders and fracture of knee joint. Immediately, she was shifted to government area hospital for treatment and on intimation, the police registered the same as a case in

Cr.No.105 of 2011 for the offences under Sections 337, 338 and 304-A IPC against the driver of the tractor of respondent No.1.

It is also contended that the claimant was earning Rs.6000/- as coolie, on account of the injuries sustained by her, she became permanently disabled and lost her future earning capacity and therefore, she sought compensation of Rs.5000/- towards transportation expenses, Rs.45,000/- towards extra nourishment and treatment and Rs.25,000/- towards pain and suffering and Rs.1,25,000/- under the head of Continuing or Permanent Disability.

Respondent Nos. 1 and 2 are the insurer and insured of the tractor respectively and they are jointly and severally liable to pay compensation. Respondent No.3/owner of the auto, was impleaded as per Orders in I.A.No.387 of 2016 dt. 31.08.2016.

Respondent Nos. 1 and 3 remained *ex parte* before the lower Tribunal.

Respondent No.2 alone filed Counter denying the material allegations *inter alia* contending that the tractor bearing No.AP 24 P 1469 did not involve in the accident and the driver of the tractor was not holding any valid driving license at the time of accident and the claimant did not sustain any injuries much less grievous injuries which would create any permanent disability, reducing her future earning capacity and prayed for dismissal of the petition.

Basing on the above pleadings, the following issues were framed by the Tribunal:

- 1) Whether the claimant sustained injuries due to rash and negligent driving of driver of tractor bearing No.AP 24 P 1469?
- 2) Whether the claimant is entitled for compensation, if so, what amount and from whom ?
- 3) To what relief ?

During trial, on behalf of claimant, PW.1 was examined and Exs. A.1 to A.4 were marked. On behalf of respondents, Rw.1 was examined and Exs. B.1 to B.3 marked.

Upon hearing the argument of both the counsel, the Tribunal concluded that the claimant sustained only one contusion, which is certified as simple in nature vide Ex.A.3, and which would not create any disability much less permanent disability which reduces future earning capacity, and thereby awarded only Rs.2,500/- as compensation towards pain and suffering and transportation charges.

Aggrieved by the Award of the Tribunal, the present Appeal is filed by the claimant contending that Tribunal did not consider various aspects regarding the permanent disability including the injuries sustained by the claimant and that the Tribunal awarded meagre compensation of Rs.2,500/-. Though the claimant incurred Rs.5000/- towards transport expenses, it awarded only Rs.500/- and the claimant also incurred Rs.45,000/- towards extra nourishment and treatment, but the Tribunal did not consider the evidence produced before the Tribunal.

It is also contended that on account of the injuries, the claimant suffered untold pain, but the Tribunal did not consider the pain which the claimant experienced and thereby committed grave error in awarding meagre amount as compensation.

During hearing, at the state of admission, the learned counsel for the claimant would contend that the claimant sustained four fractures, but the Tribunal did not consider the nature of injuries which would drastically reduces the future earning capacity of the claimant and awarded meagre amount and prayed to set side the Order and award compensation as claimed at Rs.2,00,000/-.

The Tribunal while recording the finding with regard to rashness and negligence, held that the accident was occurred due to rash and negligent act of driver of tractor and this finding is not assailed before this Court and therefore, I need not disturb the finding recorded by the Tribunal with regard to rashness and negligence on the part of the driver of the tractor. Hence, the finding recorded by the Tribunal regarding rashness and negligence is not disturbed.

The only question before this Court is the quantum of compensation awarded by the Tribunal. According to claimant, she sustained fracture of left leg, fracture of hip bone, fracture of both shoulders and fracture of knee joint and on account of those injuries, which are grievous in nature, the petitioner being a coolie became permanently disabled and her earning capacity was reduced

drastically, in future. But, the Tribunal did not consider the same. The basis for the claim to contend that she sustained four fractures is Ex.A.3 produced before the Tribunal i.e., the Medical Certificate issued by Government Area Hospital, Huzurnagar. In the said Certificate, the Doctor certified that the claimant sustained only one contusion, which is simple in nature, therefore, such conclusion would not create any permanent disablement as defined hereunder;

Section 142 of MV Act defines the word “ permanent disablement” as follows:

“For the purpose of this Chapter, permanent disablement of a person shall be deemed to have resulted from an accident of the nature referred to in sub-section (1) of Section 140 if such person has suffered by reason of the accident, any injury or injuries involving permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint; or destruction or permanent impairing of the powers of any member or joint or permanent disfiguration of the head or face”.

Here, no doubt, the Tribunal can grant compensation under the head of Loss of Future Earnings if the claimant is able to establish that on account of the injuries sustained by the claimant, her future earning capacity is reduced to any extent.

In *Raj Kumar v. Ajay Kumar and another*¹, the Apex Court laid down certain guidelines for grant of compensation under the head of Loss of Future Earnings on account of permanent disability. Even according to the judgment of the Tribunal, the injuries sustained by the claimant, if reduced, the future earning capacity of the claimant after exhausting all medical remedies, the claimant is entitled to claim

¹ 2011 ACJ page 1

compensation. But, here, the claimant sustained only a contusion which would not cause any permanent disability, reducing her future earning capacity. In the absence of proof that on account of injuries her future earning capacity was reduced to any extent, she is disentitled to the compensation under the head of Loss of Future Earnings. However, the claimant, who sustained one contusion, at best, entitle to claim compensation under the head of Pain and Suffering. Therefore, the Tribunal, rightly awarded compensation of Rs.2,000/- under the head of Pain and Suffering for the above said contusion. She was admittedly treated in Government Area Hospital, Huzurnagar, where the treatment is at free of cost. But, the Tribunal awarded Rs.500/- towards treatment and transportation which remain unchallenged by the insurance company. Therefore, the amount awarded by the Tribunal cannot be said to be meager or low and it is just and reasonable compensation, as the Tribunal after considering the nature of injury and nature of treatment awarded the above said compensation to the claimant.

She also claimed Rs.45,000/- under the head of Extra Nourishment and Treatment and future treatment. For contusion, no extra nourishment is required, but laid a claim for Rs.45,000/- without any basis and therefore the rejection of claim by the Tribunal is not an error.

She also claimed transportation expenses of Rs.5000/-, but in view of my above discussion in the earlier paras, awarding of Rs.500/-

towards transportation charges is just amount. Hence, I find no error in the order passed by the Tribunal warranting interference of this Court while exercising power under Section 173 of MV Act and hence, this Appeal is liable to be dismissed.

Accordingly, this M.A.C.M.A is dismissed at the stage of admission.

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

M. SATYANARAYANA MURTHY, J

Date: 08.06.2017
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HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY



M.A.C.M.A. No.1244 of 2017

Dt. 08-06-2017

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