

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 782 OF 2010

JUDGMENT:

This Appeal is arising out of the Judgment, dated 26.11.2009, passed in Motor Vehicle Original Petition No.363 of 2006 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Adilabad (for short, 'the Tribunal').

2. The appellant is the petitioner, who filed the claim petition under Section 166 (1) (a) of the Motor Vehicles Act against respondent Nos.1 and 2, claiming compensation of Rs.1,50,000/- on account of injuries sustained by him in a road accident.

3. Respondent No.1 set *ex parte* before the Tribunal. Respondent No.2 filed counter denying the liability and contended that the compensation claimed by the appellant is excessive.

4. The Tribunal, on consideration of evidence of witnesses i.e., P.Ws.1 and 2 and the documents Exs.A.1 to A.29, awarded compensation of Rs.75,000/- in all against respondents 1 and 2. Being aggrieved by the impugned judgment, this appeal has been preferred by the appellant for enhancement of compensation.

5. Heard the arguments of Sri S.Surender Reddy, learned counsel for the appellant and Sri K.Kishor Kumar Reddy, learned counsel for respondent No.2.

6. This is a claimant's appeal for enhancement of compensation. This is a case of injuries. On 06.12.2000 the petitioner was going along with his brother-in-law Gulam Nabi to Shiva Shakti Crusher to attend duties as driver and when they crossed Mannor bridge on

National Highway No.7, one Tipper bearing No.TN-28-U-5566 being driven by its driver with high speed, in a rash and negligent manner came from Adilabad side and dashed the appellant from his behind, as a result the appellant fell down and sustained injuries. Police registered a case against the driver of the Tipper under Section 338 IPC. The Tribunal held that the driver of the Tipper is liable for his rash and negligent driving. Due to the accident, the appellant has sustained severe injury to left thigh as the tipper ran over him. Ex.A.2 is the medical certificate issued by the medical officer, Adilabad showing the following injuries:

1. Laceration 4" x 1" x ½" over left foot,
2. Laceration 4" x 1" x 1" on left knee
3. Laceration of 2" x 1" x 3" over left thigh.

7. Injury Nos.1 and 2 are simple in nature and injury No.3 is a grievous injury. The appellant has also filed Disability Certificate- Ex.A.4 issued by the medical board, which shows that he suffered 30% disability on account of accident. The appellant was examined as P.W.1. He stated that he was admitted in the hospital on 07.12.2000, as inpatient and was discharged on 18.01.2001. He had undergone a surgery. As seen from the evidence of P.W.1, it is clear that he was advised to use non-weight bearing/crush walking knee mobilization exercise. On 06.01.2001 another operation was conducted, is as follows:

“Bilateral incision fracture of shaft femur exposed and serially reamed 11 nail 40 x 10 cms inserted. Grafting done w/c in layers over suasion drain.”

8. The appellant filed Exs.A.6 to A.28 medical bills for Rs.17,684/- in all. The appellant got examined P.W.2 the medical

officer, who deposed that he examined P.W.1 on 24.06.2006 and assessed the disability at 30% and issued Ex.A.4-Disability Certificate. The Tribunal at para 9 of its judgment observed as under:

“Now coming to the second aspect of the matter the petitioner claimed that he sustained severe fracture to his left thigh and that the vehicle i.e., the tipper ran over him and that he was shifted to Government Hospital, Adilabad in the first instance and later he was referred to Nagpur Medical College and Hospital where he took treatment for about one month and incurred heavy expenditure of Rs.40,000/-. Ex.A.2 is the medical certificate issued by the Government Hospital, Adilabad showing the following injuries. Laceration 4” x 1” x ½” over left foot, laceration of 4” x 1” x 1” on left knee and laceration of 2” x 1” x 3” over left thigh. The first two injuries are shown simple injuries and the third one is shown as compound fracture of shaft of femur and it is grievous injury. Ex.A.4 is the disability certificate issued by the Chairman, Medical Board, District Headquarters Hospital, Adilabad showing that the petitioner suffered 30% disability on account of the accident and the injuries suffered by him. Ex.A.4 is issued basing upon the disability certificate issued by Medical College Hospital, Nagpur showing that P.W.1 was admitted as inpatient in the said hospital on 07.12.2000 and was discharged on 18.01.2001. It is found from the said document that on 07.12.2000 a surgery was conducted with the following observation. Wound thoroughly debrided, wash with betadine, H₂O₂ and saline – After reduction of fracture external fixation applied w/c in layers. C & D done and POP slab applied – ATM⁺ and NBR⁺. The petitioner was advised to use non-weight bearing/crutch walking, knee mobilization exercise. On 16.01.2001 another operation was conducted with the following notes. Bilateral incision fracture of shaft femur exposed and serially reamed 11 nail 40 x 10 cms inserted. Grafting done w/c in layers over suasion drain. Ex.A.6 is the medical bill for Rs.4,800-00 and the petitioner filed bills in all for Rs.17,684-00 which are marked as Exs.A.6 to A.29. PW.2 the medical officer deposed that he examined PW.1 on 24.06.2006 and certified the disability at 30% and that Ex.A.4 is the certificate issued by him and there are

implants inside and basing upon the condition of the patient the Medical Board certified the disability at 30%.”

9. It is pertinent to note that though the appellant sustained disability, the Tribunal has not awarded adequate compensation. The appellant claimed that he was driver by profession and he filed Ex.A.3-driving licence. Therefore, the occupation of the appellant has to be taken as driver. But, there is no evidence on record about his income. Therefore, the notional income of Rs.3,000/- per month is to be taken for the purpose of calculation of compensation. Since the appellant was working as a driver, he could be considered as an unskilled labourer, working in unorganized sector. On consideration of the evidence available on record and the ratio laid down by the Apex Court in **Ramesh Singh Vs. Satbir Singh**¹, **New India Assurance Company Ltd. Vs. Smt. Shanti Pathak**², **Oriental Insurance Co. Ltd. Vs. Syed Ibrahim**³, **New India Assurance Co. Ltd., Vs. Kalpana (Smt)**⁴, a decision of High Court of Karnataka at Bangalore in **Sri Appayachari Vs. K.Vadivel and the New India Assurance Company Ltd., rep. by its Manager**⁵ and a decision of High Court of Calcutta in **United India Insurance Co. Ltd. v. Shri Buro Mahara**⁶, the notional income of the appellant can be taken into consideration as Rs.3,000/- per month. Applying the same, the annual income of the appellant would come to Rs.36,000/- (3,000 x 12). The appellant was aged about 28 years at the time of accident.

10. This is a case where the appellant has suffered 30% permanent disability and the same is proved from the evidence of P.W.2. But,

¹ MANU/SC/7089/2008

² MANU/SC/7776/2007

³ MANU/SC/7915/2007

⁴ (2007) 3 SCC 538

⁵ MANU/KA/3721/2013

⁶ MANU/WB/0139/2015

the Tribunal went wrong in awarding compensation without calculation of loss of future earnings. The award of lump sum amount was not having any basis or calculation.

11. Admittedly, the appellant was driver by profession and he filed driving licence-Ex.A.3. He suffered Bilateral incision fracture of shaft femur exposed and serially reamed 11 nail 40 x 10 cms inserted. As a driver, he will not able to perform his duties because of injuries sustained by him in the accident. There is evidence on record to show that he was advised to use non-weight bearing/crutch walking, knee mobilization exercise. The disability of 30% assessed by the Tribunal can definitely be the functional disability suffered by the appellant, as he was driver by profession and he is supposed to drive the vehicle using his legs.

12. Appellant was driver by profession. P.W.2-medical officer advised him to use crutch. He also assessed the disability @ 30%. It clearly shows that the appellant cannot even walk without support of crutch. He cannot drive a vehicle. His disability is a permanent disability, leading to functional disability. He could do any other light labour work other than driving. The tribunal has awarded a meagre amount of compensation without taking into consideration the disability. Therefore, this is a fit case where the compensation awarded by the Tribunal can be enhanced

13. The Hon'ble Supreme Court in **Nagappa v. Gurudayal Singh**⁷, held that award need not be limited to amount specified in claim petition. Only embargo is that it should be 'just' compensation. It

⁷ AIR 2003 SC 674

should be neither arbitrary nor unjustifiable evidence. It was held in the said case in para 23 as follows:

“23. However, it is to be clearly understood that M.V. Act does not provide for passing of further award after final award is passed. Therefore, in a case where injury to a victim requires periodical medical expenses, fresh award cannot be passed or previous award cannot be reviewed when the medical expenses are incurred after finalization of the compensation proceedings. Hence, only alternative is that at the time of passing of final award, Tribunal/Court should consider such eventuality and fix compensation accordingly. No one can suggest that it is improper to take into account expenditure genuinely and reasonably required to be incurred for future medical expenses. Future medical expenses required to be incurred can be determined only on the basis of fair guess-work after taking into account increase in the cost of medical treatment.”

14. Due to injuries sustained by the appellant, he may not be able to drive the vehicle in future, and he would suffer functional disability because of injuries sustained by him in the accident. Therefore, the functional disability assessed by the medical officer at 30%. Keeping in view the ratio laid down in the decision reported in **Rajkumar v. Ajay Kumar**⁸, functional disability as 30% can be taken for awarding compensation in this matter.

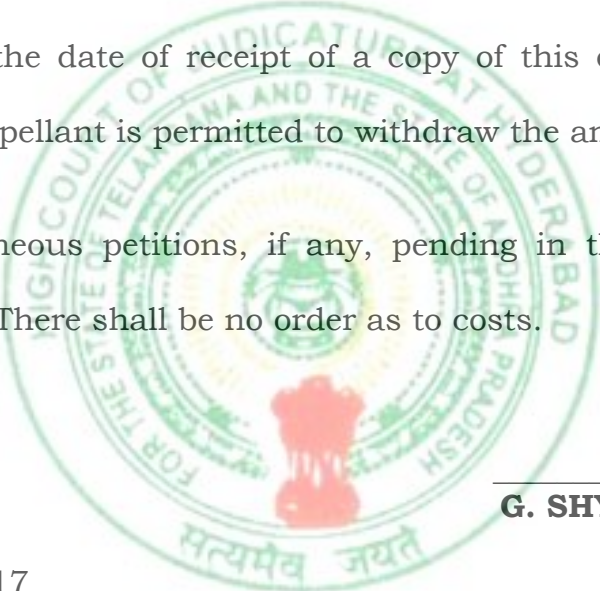
15. Taking into consideration the judgments referred above, the income of the appellant is taken into consideration as Rs.3,000/- per month. Thus, his annual income would be Rs.36,000/- (Rs.3,000/- X 12). He was 28 years by the date of accident. The appropriate multiplier applicable to his age as per the decision of the Apex Court

⁸ (2011) 1 SCC 343

in **Sarla Verma v. Delhi Transport Corporation**⁹ is '17'. Thus, the appellant is entitled to loss of future earnings at Rs. 1,83,600/- (Rs.36,000/- X 17 X 30%). Apart from the same, Rs.3,000/- towards loss of earnings and Rs.2,000/- towards transportation charges are also awarded.

16. In the result, the appeal is allowed and the impugned Award passed by the Tribunal is modified enhancing the compensation from Rs.75,000/- to Rs.1,88,600/- with subsequent interest at the rate of 7.5% per annum from the date of petition till realization. The respondents are directed to deposit the amount within two (02) months from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the amount.

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



G. SHYAM PRASAD, J

Date:28.03.2017
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⁹ (2009) 6 SCC 121

HON'BLE SRI JUSTICE G. SHYAM PRASAD



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