

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

M.A.C.M.A.NO.838 OF 2010

JUDGMENT

This appeal arises out of the order dated 10.3.2010 passed in MVOP.No.465 of 2009, on the file of Motor Vehicles Accidents Claims Tribunal – cum – IV Additional District Judge, Guntur.

The appellant is the claimant, who is the injured in the accident.

The brief facts of MVOP. NO. 465/2009 are that on 13.2.2009 the appellant is the driver of the lorry bearing No. AP 7 TT 4589. He parked his lorry near N.C.S. go-down for the purpose of loading, and was sleeping near the lorry. The driver of another lorry (1st respondent), drove at high speed, in a rash and negligent manner and ran over the left hand of the claimant. As a result, the claimant sustained crush injury. Immediately he was hospitalised and incurred an expenditure of Rs.1,00,000/- for treatment. It is claimed that he was aged 44 years and earning an amount of Rs.3,500/- per month. Because of the accident, he sustained permanent disability, and was unable to work and earn, as he was earning prior to the accident. With these averments, the claimant filed claim petition under Section 166 of Motor Vehicles Act, 1988, claiming compensation of Rs.4,00,000/- with costs and interest.

The 1st respondent, owner of crime lorry remained ex party. The 2nd respondent – Insurance Company filed written statement, and while denying the averments made in the claim petition, stated that the claimant was put to prove that, the vehicle in question was insured with the respondents, and

whether the driver was having valid and effective licence and if there is any violation of the policy conditions, the insurer could avoid the liability. As the 1st respondent remained ex parte, the 2nd respondent invoked Section 170 of the Act, and further disputed the occupation, age, and income of the claimant, and contended that the appellant had not suffered any disability. It further contended that the claim was highly excessive.

The Tribunal, on considering the oral and documentary evidence, awarded an amount of Rs.25,000/- towards pain and suffering, Rs.20,000/- towards medical and incidental expenses, and by taking the disability at 50 per cent and earnings at Rs.3,500/- per month, by applying the multiplier of 14, awarded an amount of Rs.2,94,000/- towards disability. Thus in all the Tribunal awarded an amount of Rs.3,39,000/- with proportionate costs and interest at the rate of 7.5 per cent from the date of the petition, till the date of realization.

Not being satisfied with the same, the present appeal has been filed. Heard Sri M.Koteshwara Rao, learned counsel appearing for Sri N.Subba Rao, learned counsel for the appellant. None appears on behalf of the respondent – Insurance Company.

The learned counsel appearing for the claimant/appellant confined his argument only to the assessment of disability made by the Tribunal. It is contended that the Tribunal has wrongly taken the disability of the appellant at 50 per cent, when there is evidence on record to show that the disability was 60 per cent. In support of this contention, the learned counsel has

taken this court through paragraph No.17 of the impugned order, which reads as under:

“Now coming to the disability, to assess that the disability is 60% and petitioner cannot effectively drive any motor vehicle and petitioner was said to be earning Rs.3,500/- p.m., in addition to other income like TA and DA. At any rate, a sum of Rs.3,500/- could be taken as average monthly. Though there is slight discrepancy with regard to the age, the age mentioned in the driving licence Ex.A-9 is taken into consideration and multiplier ‘14’ is applied and disability is taken as 50%. Hence, a sum of Rs.2,94,000/- is granted towards disability and total compensation payable will come to Rs.3,39,000/- payable by both respondents with proportionate costs and interest @ 7.5% p.a., from the date of petition till the date of realization. “

The learned counsel submits that the medical officer (P.W.2) examined the claimant, and testified that the claimant cannot drive the vehicle, as he lost one arm. The Tribunal basing on these facts, assessed the disability at 50 per cent.

It is evident that the Tribunal, without recording any valid reasons, has reduced the disability of the claimant to 50 per cent, though the medical evidence shows that he suffered 60 per cent disability. Therefore, the finding of the Tribunal in this regard, is not acceptable, as such the claimant is entitled for compensation for the disability at 60% suffered by him.

The earnings of the claimant are taken at Rs.3,500/- per month. His annual income would be Rs.3,500/- x 12 = Rs.42,000/-. If 60 per cent disability is taken, he would be entitled to Rs.3,52,800/-. Thus, the compensation awarded by the Tribunal under the head of disability, is enhanced to Rs.3,52,800/-. On all other aspects, the award of the Tribunal is confirmed.

The appeal is accordingly allowed in part to the extent indicated above.

No costs.

Miscellaneous petitions pending if any, shall stand closed.

G.SHYAM PRASAD,J

DATE:08—02—2017

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