HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 2259 OF 2006

JUDGMENT:

1. This Appeal is arising out of the order, dated 20.02.2006, in M.V.O.P. No.7 of 2004 on the file the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-V Additional District Judge (Fast Track Court), Guntur (for short, 'the Tribunal').

2. Appellant herein is the petitioner, 1st respondent herein is the owner and 2nd respondent herein is the insurer of the Ambassador Car bearing No.AP 07E 5558, who filed a petition before the Tribunal under Sections 163-A and 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), claiming compensation of Rs.1,00,000/- on account of injuries sustained by him in a motor vehicle accident occurred on 05.06.2003.

3. The brief facts of the petition are that, on 05.06.2003, at about 02-30 a.m., while the appellant was proceedings from Pidiguralla to Guntur in the Car, and reached near Jangamguntlapalem 14th mile stone, the driver of the car lost control over it and drove the same in a rash and negligent manner, with high speed, without observing the traffic signals, as a result of which the Car turned to right side of the road margin and hit the roadside tree. As a result of which, the appellant sustained dislocation of his thigh. Immediately, he was shifted to the Government General Hospital, Guntur. A case in Crime No.57 of 2003, for the offences under Sections 337 and 338 I.P.C., was registered by the Medikonduru P.S. against the driver of crime vehicle. Hence, claimed compensation of Rs.1,00,000/-.

4. Respondent No.1, owner of the crime vehicle, remained *ex parte* before the Tribunal.

5. Respondent No.2-insurance company filed counter denying the rash and negligent act on the part of the driver of the crime vehicle and contended that the driver of the crime vehicle was not holding valid driving license to drive the vehicle and that the appellant is an unauthorized midway passenger. The 1st respondent un-authorizedly used the car for public purpose, though it is a private car, by boarding the passengers for money and, hence, the appellant is not entitled for compensation as there is no coverage of insurance for him. Further contended that the quantum of compensation claimed by the appellant is excessive, exorbitant and prayed for dismissal of the petition.

6. The Tribunal, on consideration of the pleadings and evidence of the witnesses PWs.1 and 2, the documents Exs.A-1, A-2 and X-1 on behalf of the appellant, and the witness RW.1 and Ex.B-1 on behalf of the 2nd respondent, passed the Award granting compensation of Rs.19,250/-, as against the claim of Rs.1,00,000/-, with proportionate costs and interest at the rate of 6% p.a. from the date of petition till realization, making 1st respondent alone liable for payment of the compensation.

7. Being aggrieved by the quantum of compensation, the appellant preferred the instant Appeal seeking enhancement of the compensation.

8. Heard Mr. B. Parameswara Rao, learned counsel for the appellant, and Mr. Naresh Byrapaneni, learned standing counsel for the 2nd respondent-insurance company. The claim against respondent No.1, owner of the crime vehicle, was dismissed for default *vide* order of this Court on 05.07.2016.

9. The points that arise for consideration in this matter are:

1) Whether the appellant is entitled for enhancement of compensation?

2) Whether the 2nd respondent-insurance company is also liable to pay compensation?

10. POINT Nos.1 and 2: Since both the points are interconnected, go together. Learned counsel for the appellant submits that the compensation awarded by the Tribunal is very meager. The Tribunal has not considered the evidence properly with regard to nature of injuries suffered by the appellant and awarded less interest. It is further submitted that the Tribunal fixed liability only against the 1st respondent, owner of the crime vehicle, exonerating the liability of the 2nd respondent-insurance company, though there is a comprehensive insurance policy – Ex.B-1. It is submitted that Ex.B-1 is the comprehensive insurance policy which covers the risk of the passengers who travel in a private car. As per the terms and conditions of Ex.B-1 policy, Section 2 of the terms and conditions of policy deals with liability to third parties, which reads as under:

"SECTION II

LIABILITY TO THIRD PARTIES

1. Subject to the limits of liability as laid down in the Schedule hereto the Company will indemnify the insured in

the event of an accident caused by or arising out of the use of the vehicle against all sums which the insured shall become legally liable to pay in respect of:

i) death of or bodily injury to any person including occupants carried in the vehicle (provided such occupants are not carried for hire or reward) but except so far as it is necessary to meet the requirements of Motor Vehicles Act, the Company shall not be liable where such death or injury arises out of and in the course of the employment of such person by the insured.

ii) damage to property other than property belonging to the insured or held in trust or in the custody or control of the insured.

2. The company will pay all costs and expenses incurred with its written consent.

3. In terms of and subject to the limitations of the indemnity granted by this section to the insured, the Company will indemnify any driver who is driving the vehicle on the insured's order or with insured's permission provided that such driver shall as though he/she was the insured observe, fulfill and be subject to the terms, exceptions and conditions of this Policy in so far as they apply.

4. In the event of the death of any person entitled to indemnity under this policy the Company will in respect of the liability incurred by such person indemnify his/her personal representative in terms of and subject to the limitations of this Policy provided that such personal representative shall as though such representative was the insured observe, fulfill and be subject to the terms, exceptions and conditions of this Policy in so far as they apply."

11. Learned counsel for the appellant submits that Ex.B-1 policy is a comprehensive policy which covers the risk of the passengers traveling in a vehicle with which it was insured. It is further submitted that since the appellant had traveled in the car, which is insured

with the 2nd respondent under Ex.B-1 policy, his risk is also covered under Ex.B-1 policy. Learned counsel further submits that even as per the Circulars of I.R.D.A. the inmates of a private vehicle are covered under the comprehensive policy. It is further submitted that in view of the conditions mentioned *supra*, the 2nd respondent-insurance company is also liable to pay compensation to the appellant. Therefore, finding of the Tribunal to that extent may be set-aside by directing both the respondents jointly and severally liable to pay the compensation.

12. This is an Appeal filed by the appellant-injured in a motor vehicle accident for enhancement of compensation. The 2nd respondent-insurance company challenged its liability initially contending that the appellant traveled in the private car, as such there is no coverage for the appellant, and as such it is not liable for payment of compensation. Further, during the course of argument, learned standing counsel has fairly conceded that there is coverage of insurance for the appellant traveling in the crime vehicle, which met with the accident, in the instant case. Hence, I hold that both the respondents are jointly and severally liable to pay the compensation.

13. Now, the dispute is only with regard to quantum of compensation. Learned counsel for the appellant submits that when the appellant claimed compensation of Rs.1,00,000/- for the injuries sustained by him, the Tribunal has awarded Rs.19,250/-, which is on lower side. Learned counsel further submits that he was treated as inpatient for 35 days and he was bedridden for 95 days

and there was dislocation of hip and he suffered disability due to the injuries. Learned counsel for the appellant further submits that the rate of interest awarded by the Tribunal is on lower side and therefore it needs to be enhanced to 7.5% p.a.

14. On consideration of the evidence on record, the Tribunal with regard to the nature of injuries suffered by the appellant and the treatment undergone by him in the Government General Hospital and from the evidence of P.W.2, - Dr. V.V. Narayana Rao, observed as follows in Para 15 of its order:

> "15). In support of such oral evidence of P.W.1 petitioner/P.W.1 examined P.W.2 Dr. V.V. Narayana Rao, Assistant Professor, Orthopedic wing, Government General Hospital, Guntur. According to the oral evidence of P.W.2 that, P.W.1 was admitted in Government General Hospital, Guntur on 05.06.2003 with the following injuries: 1) 2 x 2 ¼ inches lacerated wound present on the upper eye, 2) 4 x 2 c.m. separated on right leg, 3) Flexion adduction and internal rotation of right lower limb. Radiological patient has dislocation of right hip with establisher fracture. The dislocation hip reduced on 05.06.2003 under General anesthesia and patient was discharged on 10.07.2003. There may be difficulty in driving auto rickshaw. Patient was examined in the court and the patient is having at present mild restriction of right hip movement and the permanent disability is 10% to 15%. Ex.X-1 is the case sheet of P.W.1. No doubt, Ex.X-1 case sheet of P.W.1 maintained by Government General Hospital, Guntur clearly supported the above version of P.W.2. Further, of course, no worthwhile is elicited in the cross-examination of P.W.2 by R.2. Undoubtedly, in one angle, the above oral evidence of P.W.2 lends sufficient support to the oral evidence of P.W.1. But the above oral evidence of P.W.2 relating to 10% to 15% disability is concerned, I do not accept it *in toto*, because, that piece of evidence of P.W.2 has lost part of its weight,

because, even on seeing the patient i.e. P.W.1 on the date of his giving evidence before the tribunal, he could not assess clearly about the percentage of disability, so as to say, whether the percentage of disability is either 10% or 15%. So, such evidence of P.W.2 is in oscillation. While that is being so, the evidence of P.W.2 available in his chief-examination about the disability of 10% to 15% is very much cloudy. Therefore, I feel it is fair and reasonable to take the percentage of disability of P.W.1 as 12%. Accordingly, the above oral evidence of P.W.2 besides the documentary evidence in Ex.X.1 case sheet of P.W.1 maintained by Government General Hospital, Guntur, is accepted."

15. The Tribunal, in Para 15 of its order, has observed that the medical officer has examined the appellant and mentioned in Ex.A-1 case sheet about the treatment given to him. He also stated that there was 10 to 15% of permanent disability but the Tribunal has not accepted his evidence and fixed the disability at 12%, which analysis does not appear to be reasonable. When the Medical Officer has stated that the disability is 10 to 15%, the Tribunal ought to have fixed the disability at 15% for the purpose of calculation of compensation; because, the benefit should go to the appellant-injured in a motor vehicle accident since the Act is a beneficial legislation. The Tribunal has taken into consideration the income of the appellant as Rs.15,000/- p.a., though the appellant stated in his evidence that at the time of accident he was earning Rs.3,000/- p.m. as an auto driver, it was not taken into consideration by the Tribunal, as there was no documentary proof for the earnings of an auto driver. Naturally, there may not be any documentary proof for the earnings of an auto driver. Auto drivers are daily wage earners who earn day to day by running their autos. Hence, there need not

be any documentary evidence for the earnings of the appellant-injured but the Tribunal holding that there should be some documentary evidence in proof of income fixed the annual income of the appellant-injured arbitrarily as Rs.15,000/- as his notional income, ignoring the evidence of the appellant. Admittedly, P.W.1 was an auto driver. If we take into consideration the income of a labourer as per the Minimum Wages Act, 1948, and also in view of the principles laid down by the Apex Court in *Ramesh Singh Vs. Satbir Singh*[1], *New India Assurance Company Limited Vs. Smt. Shanti Pathak*[2], *Oriental Insurance Company Limited Vs. Syed Ibrahim*[3], *New India Assurance Company Limited Vs. Smt. Kalpana*[4], a decision of High Court of Karnataka at Bangalore in *Sri Appayachari Vs. K. Vadivel and the New India Assurance Company Limited, Rep. by its Manager*[5] and a decision of High Court of Calcutta in *United India Insurance Company Limited Vs. Shri Buro Mahara*[6], income of the appellant in the instant case can be fixed as Rs.3,000/- p.m. and accordingly his annual income would come to Rs.36,000/-. In view of the principle laid down by the Apex Court in *Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another*[7], the relevant multiplier applicable to the age group of the appellant between 21 to 25 years is '18' and if the multiplicand '18' is multiplied with his annual income, the notional annual income would come to Rs.6,12,000/-. In *Raj Kumar Vs. Ajay Kumar and*

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[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
[7] 2009 (6) SCC 121

another[8], the Apex Court explained about the assessment of functional disability and as no necessity to deduct any amount towards personal and living expenses of the appellant-injured in the case of fatal accidents resulting in deaths. The appellant has suffered 15% disability, as per the evidence of P.W.2 and if 15% out of the notional annual income of Rs.6,12,000/- is taken into consideration, the amount of compensation to be awarded under the head of permanent disability would come to Rs.91,800/- but the Tribunal erroneously awarded Rs.30,600/- and further restricted it to Rs.10,000/-, as claimed by the appellant.

16. Considering the material available on record, the following is the tabular form showing the amount of compensation awarded by the Tribunal and enhanced by this Court, if any, under each head:

Sl.No.	Name of Head	Awarded by Tribunal	Awarded by this Court
01.	Permanent disability	Rs.10,000/- (12% disability)	Rs.91,800/- (15% disability)
02.	Loss of estate/loss of earnings	Rs.6,250/- (125 x 50)	Rs.12,000/- (4 x 3,000)
03.	Medical expenses, extra nourishment, attendant charges and conveyance	3,000/-	Rs.10,000/-
TOTAL		Rs.19,250/-	Rs.1,13,800/-

17. Thus, the appellant is entitled to the compensation more than claimed, in view of the principle laid down by the Apex Court in *Nagappa Vs. Gurudayal Singh*[9], where the Apex Court opined that since the provisions of the Act have no restriction to award the compensation more than claimed and in appropriate cases, where from the evidence brought on record, the Courts feel that the

[8] 2011 (1) SCC 343
[9] 2003 (2) SCC 274

claimant is entitled to get more compensation than claimed, the Courts may award such compensation but the only embargo is that it should be '*just compensation*', but should neither be arbitrary, fanciful nor unjustifiable from the evidence.

18. Accordingly, with the above observation, the Appeal is allowed enhancing the compensation awarded by the Tribunal from Rs.19,250/- to Rs.1,13,800/-. Insofar as the rate of the interest awarded by the Tribunal is concerned, it is on lower side and in view of the principle laid down by the Apex Court in *Dharampal and others Vs. U.P. State Road Transport Corporation*[10], the rate of interest awarded by the Tribunal is modified to that of 7.5% p.a. which is payable by the respondents from the date of petition till realization. However, the appellant is directed to pay the deficit court fee before the Tribunal within a period of one month from the date of receipt of a copy of this judgment. Both the respondents are directed to deposit the entire compensation within a period of two months from today. On such deposit, the appellant is permitted to withdraw the entire amount after expiry of appeal time.

19. As a sequel, pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

JUSTICE G.SHYAM PRASAD

Date. 17.02.2017.
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[10] MANU/SC/7680/2008

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