

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

MACMA No.492 of 2006

JUDGMENT:

Aggrieved by the award of compensation of Rs.26,300/- by the learned Chairman, Motor Accident Claims Tribunal-cum-District Judge, Srikakulam, (for short 'the Tribunal'), to the petitioner in M.V.O.P.No.236 of 2000 filed for the injuries sustained by him in a motor vehicle accident, against the claim of Rs.2,00,000/-, the present appeal is preferred under Section 173 of the Act.

Appellant herein is the petitioner, while respondent No.1 is the owner of the offending vehicle and respondent No.2 is the insurer of the offending vehicle, in M.V.O.P.No.236 of 2000.

For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in M.V.O.P.No.236 of 2000.

The facts of the case, in brief, are as under:

On 07.12.1999, the petitioner, who was working as labourer (khalasi), along with some other labourers boarded the tractor/trailer bearing Nos.AP30 T 1129 and AP30 T 1130 with a load of wooden logs, and at about 7.00 p.m., when the said vehicle reached near Bheemapuram Junction National Highway

No.5, its driver drove it in rash and negligent manner, due to which, it turned turtle and fell down in the fields by the side of the road, causing death of two of the labourers and multiple injuries to other labourers including the petitioner. Then, the petitioner was shifted to the hospital and underwent treatment. Therefore, he prayed to grant a compensation of Rs.2,00,000/-.

Respondent No.1 remained *ex parte*.

Respondent No.2 filed counter before the Tribunal denying the occurrence of accident and stating that as the offending vehicle was carrying more than six persons, insurance company is not liable to pay compensation to the petitioner as per the terms of the insurance policy, and thereby, sought to dismiss the claim.

Based on the above pleadings, the Tribunal framed five issues. To substantiate the claim, on behalf of the petitioner, P.Ws.1 and 2 were examined and Exs.A.1 to Ex.A.5 were marked and on behalf of respondent No.2, R.W.1 was examined and Exs.B.1 to B.4 were marked. Ex.X.1 – charge sheet was also marked.

On consideration of the material on record, the Tribunal held that the alleged accident occurred due to rash and negligent driving of driver of offending vehicle. The Tribunal after appreciating the evidence of P.Ws.1 and 2 and Exs.A.1 to A.5,

granted Rs.26,300/- towards compensation in favour of the petitioner, against the respondents, jointly and severally.

On 22.04.2016, this appeal stood dismissed against respondent No.1, as no notice was served upon him.

Learned counsel for the petitioner/appellant contended that the Tribunal granted compensation to the petitioner without considering the permanent disability suffered by him, as evident from Ex.A.5 – Physically Handicapped Certificate. He also contended that the compensation awarded by the Tribunal is very meagre and thereby, prayed the Court for enhancement of compensation.

On the other hand, learned Standing Counsel appearing for the insurance company submitted that the order impugned needs no interference by this Court and prayed to dismiss the appeal.

A perusal of the order under appeal shows that there is no dispute with regard to the occurrence of alleged accident on 07.12.1999, due to rash and negligent driving of driver of offending vehicle. With regard to the grant of compensation, the Tribunal appreciated the oral evidence of P.Ws.1 and 2, coupled with the documentary evidence, Exs.A.1 to A.5, and awarded compensation of Rs.26,300/- to the petitioner. It is clear from the award of the Tribunal that there is no grant of compensation to the petitioner towards his disability. As per Ex.A.5 – Physically

Handicapped Certificate, the Chairman, Medical Board, opined that the petitioner suffered 45% disability. In Ex.A.5, there is no specific mention whether the disability is permanent or not. In his evidence, P.W.2 – doctor deposed that the petitioner suffered 30% disability, but there is no mention as to whether the disability is permanent or not. There is evidence to believe that the petitioner suffered fracture in his right leg. In view of the fact that due to the alleged accident, the petitioner sustained other injuries and underwent treatment, as evident from Exs.A.1, A.2 and A.5 and also Ex.X.1, and considering the totality of the facts and circumstances of the case, it is held that the petitioner suffered 20% permanent disability and is entitled to the compensation on that score.

At the time of filing of O.P. before the Tribunal, the age of the petitioner was mentioned as 45 years. In his evidence, the petitioner deposed that he was a labourer and earning Rs.3,000/- per month. As per the decision of the Apex Court in **Sarla Verma & Others v. Delhi Transport Corporation and another**¹, the multiplier of “14” is applicable to the age of the petitioner. Therefore, if the annual income of the petitioner is multiplied with the appropriate multiplier ‘14’, the amount comes to Rs.5,04,000/- (Rs.3,000/- X 12 X 14). Since the petitioner

¹ (2009) 6 Supreme Court Cases 121

suffered 20% disability, the compensation under the head of disability comes to Rs.1,00,800/- (Rs.5,04,000/- X 20/100) and the same is rounded off to Rs.1,01,000/-. In view of the totality of the facts and circumstances of the case, this Court is of the opinion that the compensation awarded by the Tribunal under various other heads does not require interference by this Court. Hence, the petitioner is entitled to a total compensation of Rs.1,27,300/- (Rupees One Lakh Twenty Seven Thousand Three Hundred only).

With regard to the liability of the respondents to pay compensation to the petitioner, it is to be seen that Ex.B.1 – copy of insurance policy is subsisting as on the date of accident as such the respondents are liable to pay compensation to the petitioner, jointly and severally, as rightly held by the Tribunal. However, on the enhanced amount of compensation, the petitioner is entitled to interest @ 7.5% per annum from the date of petition till realization. The petitioner is permitted to withdraw entire compensation.

Accordingly, the appeal is allowed in part.

Pending miscellaneous applications, if any, shall stand closed in consequence. No order as to costs.

Dr. SHAMEEM AKTHER, J

27th JANUARY, 2017.

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