

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A No. 147 of 2005

JUDGMENT:

This appeal is arising out of the order dated 03.06.2002 passed in O.P.No.242 of 1996 on the file of the Motor Accidents Claims Tribunal (Before the I Additional District Judge, Ongole) (for short, 'the Tribunal').

2. Brief facts of the case are that on 19.11.1995, the petitioner attended to coolie work and after he loaded stones in lorry bearing No.ABP 279, he was returning to Ongole in the said lorry. At about 7.00 AM, near Tapa Chettu, at KM 34 Stone on Ongole-Kurnool Road, a jeep came in opposite direction at a high speed and on seeing the same, the driver of the lorry applied sudden brakes and lost control over the lorry and the lorry went into the road side fields and turned turtle resulting in the accident. The petitioner received severe injuries in the accident and therefore he filed a petition claiming compensation of Rs.1,00,000/- on account of the injuries suffered by him in the accident. The Tribunal awarded an amount of Rs.28,000/- as against his claim of Rs.1,00,000/-. Aggrieved by the same, this appeal has been preferred for enhancement of compensation.

3. Heard the arguments of learned counsel for the appellant and 2<sup>nd</sup> respondent.

4. Learned counsel for the appellant-petitioner would submit that the Tribunal has not awarded adequate compensation for the

injuries suffered by the petitioner. The functional disability has not been considered by the Tribunal. The disability certificate issued by the medical officer shows the disability as 15% and it is only a physical disability and that the petitioner suffered 100% functional disability. The counsel placed reliance on the decision reported in *Basappa, s/o Sanganasappa Bahvikatti v. T. Ramesh, s/o Tangavelu and another*<sup>1</sup>, and submitted that functional disability has to be taken into consideration while assessing compensation and that the Tribunal has not taken into consideration the functional disability and the Tribunal has taken only the physical disability and therefore the compensation has to be awarded taking into account the functional disability at 100% in this case.

5. Learned counsel for the respondent submits that the Tribunal has properly appreciated and relied on the evidence of PW2-medical officer who assessed the disability at 15% and rightly arrived at the conclusion and awarded adequate compensation and therefore the same does not require any interference.

6. It is pertinent to note that in the case of *Basappa* (1 supra), guidelines have been given as to how to calculate the compensation and the functional disability in the case of injuries. It is obvious that the Tribunal has taken 15% physical disability and it has not considered the functional disability suffered by the petitioner. Admittedly, the appellant is a labourer by profession. His work involves physical activities. He suffered fracture to his right thigh bone and rods were inserted in his thigh. Consequently his leg was

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<sup>1</sup> (2014) 10 SCC 789

shortened by 1½ inch as per medical evidence of PW2. In such circumstances, the functional disability has also to be taken into consideration.

7. Keeping in view the facts of the case, since the petitioner suffered disability in his one leg, it would be appropriate to take 50% disability, including the physical disability of 15%. Therefore, the functional disability is taken at 35% and the physical disability at 15%. The age of the petitioner was 24 years by the date of accident and the multiplier applicable to his age is '18' as per *Sarla Verma v. Delhi Transport Corporation*<sup>2</sup>. The Tribunal has taken the notional income of the petitioner as Rs.1,500/- per month. The notional income of the petitioner can be taken as Rs.2,000/- per month since the accident occurred in the year 1995.

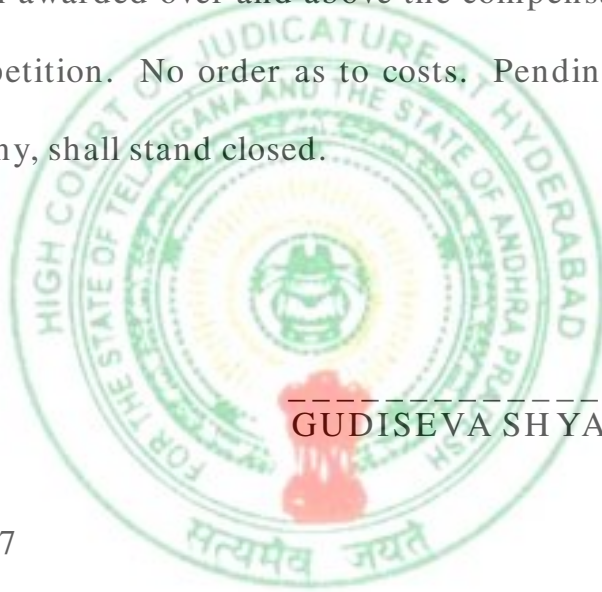
8. Taking the income of the petitioner as Rs.2,000/- per month, his annual income would come to Rs.24,000/-, and therefore, his loss of earnings due to 50% disability would come to Rs.12,000/-. Applying multiplier '18', the loss of future earnings would be Rs.12,000 x 18 = Rs.2,16,000/-.

9. On consideration of the material on record, and submissions of the learned counsel for the appellant-petitioner, and learned counsel for respondent, this Court is of the opinion that the compensation awarded by the Tribunal is inadequate and therefore it is to be enhanced from Rs.28,000/- to Rs.2,16,000/-.

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<sup>2</sup> (2009) 6 SCC 121

10. In the result, the appeal is allowed and the compensation awarded by the Tribunal is enhanced from Rs.28,000/- to Rs.2,16,000/- with proportionate costs and interest at 7.5% per annum from the date of petition till realization. The rest of the award passed by the Tribunal shall remain intact. The 2<sup>nd</sup> respondent-insurance company is directed to deposit the compensation amount within two months from the date of this order. On such deposit, the appellant is permitted to withdraw the entire amount. The petitioner is directed to pay the Court fee for the compensation awarded over and above the compensation claimed in the original petition. No order as to costs. Pending miscellaneous petitions, if any, shall stand closed.



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GUDISEVA SHYAM PRASAD, J

21<sup>st</sup> June, 2017

KSM

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