

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

M.A.C.M.A. No.1553 of 2017

JUDGMENT:

Dissatisfied with the award, dated 30.03.2017, in M.V.O.P.No.2 of 2015 on the file of the Chairman, Motor Vehicle Act Tribunal-cum-V-Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, Hyderabad, (for short, 'the Tribunal') the petitioner preferred this appeal under Section 173 of the Motor Vehicles Act.

2. For the sake of convenience, the parties hereinafter referred to as arrayed in M.V.O.P.No.2 of 2015.

3. The petitioner filed petition under Section 163-A of Motor Vehicles Act, 1988, claiming compensation of Rs.7,00,000/- for the injuries sustained by her in the road accident that occurred on 12.11.2014 at about 12.30 p.m. when the petitioner went to NFC Bus stop to see-off her relatives and while returning, one Tata Indica Car bearing No.AP 36 L 6304 was being driven by its driver at high speed, rashly and negligently and hit the petitioner from her back and immediately she fell down and received multiple fractures including on her right leg along with other grievous injuries all over the body. Immediately, the petitioner gave a complaint before Ghatkesar Police Station and the same was registered as Crime No.529 of 2014 against the driver of Tata Indica Car bearing No.AP 36 L 6304. On account of injuries, the petitioner permanently disabled and she underwent

treatment for a substantial period, therefore, she claimed compensation of Rs.7,00,000/- under various heads.

4. Respondent No.1 filed counter denying the material allegations *interalia* contending that in the Calender Case the driver was acquitted for the offence punishable under Section 304-A IPC by the VIII Special Magistrate Court, Hastinapuram, and that the accident was occurred not due to rash and negligent act of the driver and thereby respondent No.1 is not liable to pay compensation.

5. Respondent No.2 also filed an independent counter and contended that the vehicle was not insured and having no coverage of insurance, the Insurance Company is entitled protection under Section 140, 147, 149 and 158 of the Motor Vehicles Act and that the compensation and interest claimed by the petitioner under various heads is excessive and exorbitant and prayed to dismiss the appeal.

6. Basing on the above pleadings, the Tribunal framed the following issues:

1. Whether the accident occurred on 12.11.2014 at 1230 hours near Bus stop at NFC Nagar?
2. Whether the said accident caused due to rash and negligent driving of the car bearing No.AP 36 L 6304?
3. Whether the petitioner is entitled to claim damages? If so how much and against which of the respondents?
4. To what relief?

7. During enquiry, on behalf of the petitioner, PWs.1 to 5 were examined and Exs.A.1 to A.9 were marked. No oral evidence was adduced, but Ex.B.1-copy of Insurance Policy was marked on behalf of the respondents.

8. Upon hearing the arguments of both the counsel for petitioner and respondents, the Tribunal awarded compensation of Rs.4,54,714/- under all heads together with interest at 7% per annum from the date of petition till the date of deposit.

9. Dissatisfied with the award, the petitioner preferred the present appeal mainly contending that the amount awarded by the Tribunal is low and the Tribunal did not consider the impact of the injuries on the future life of the petitioner and the Tribunal also ignored that the legislation is welfare legislation intended to benefit the persons, who are suffering from injuries and the compensation awarded by the Tribunal is very low rate and prayed to enhance the compensation to Rs.7,00,000/-.

10. During hearing, learned counsel for the petitioner would contend that on account of injuries sustained by the petitioner, she suffered huge loss besides loss of future income and thereby the compensation awarded under various heads by the Tribunal is low and the petitioner is entitled to compensation of Rs.7,00,000/- under various heads. It is also contended that the Tribunal did not consider the medical bills produced before the Tribunal, which are marked as

Exs.A.5 to A.8, in proper perspective and committed an error in declining to accept the medical bills.

11. The Tribunal found that the accident was occurred due to rash and negligent driving of the driver of the Tata Indica Car bearing No AP 36 L 6304, therefore, the finding recorded by the Tribunal is maintained with regard to the cause of accident.

12. The only point to be considered in this appeal is “whether the compensation awarded by the Tribunal is just and reasonable, if not, liable to be enhanced to Rs.7,00,000/- as claimed in the petition”?

13. The petitioner is a house-wife. According to cause title, the petitioner is aged about 42 years and she sustained three fracture injuries as referred in Ex.A.3-Medical legal record and Ex.A.7 X-rays and those documents disclosed the following:

1. Fracture femur left side lower thigh
2. Fracture femur right side in the middle thigh
3. Trochanteric fracture left hip.

Thus, the petitioner received three fracture injuries. The petitioner though sustained fractures whether those injuries would create any permanent disability which reduces future earning capacity of the petitioner is a question to be decided. The word permanent disablement is defined under Section 142 of M.V.Act, which is as follows:

142. Permanent disablement—

For the purposes of this Chapter, permanent disablement of a person shall be deemed to have resulted from an accident of the nature referred to in sub-section (1) of section 140 if such person has suffered by reason of the accident, any injury or injuries involving:—

- (a) permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint; or
- (b) destruction or permanent impairing of the powers of any member or joint; or
- (c) permanent disfiguration of the head or face.

14. In **Raj Kumar v. Ajay Kumar and another**¹, the Apex Court held that any disablement which refers to reduces the capacity to engage the petitioner in any gainful activity after exhausting all remedies, can be said to be permanent disability. Again permanent disability can be classified into two categories, one is functional disability and the other is physical disability. The disability reducing earning capacity in future of the petitioner, can be said to be functional disability. Therefore, for awarding compensation under M.V.Act the Tribunal has to assess the loss due to the disability.

15. Here, the petitioner filed the petition before the Tribunal under Section 163-A of the M.V.Act and in **Managing Director, Bangalore Metropolitan Transport Corporation v. Sarojamma and another**², wherein the Supreme Court held that when the claim is filed under

¹ 2011 ACJ 1

² 2008 (4) ALD 1 (SC)

Section 163-A of the M.V.Act, the Court has to fix the compensation based on table in the Schedule-II of M.V.Act. But, in the later judgment in **National Insurance Company Ltd. V. Sinitha and others**³, the Supreme Court has drawn distinction between the claims under Sections 163-A and 140 of M.V.Act and according to the principle laid down in the above judgment, even in the claims filed under Section 163-A of the M.V.Act, the parties to the claim have to prove the manner of accident, but the initial burden will automatically shift to the petitioner and it is based on converse proof. Therefore, occurrence of accident due to negligence or wrongful act of the driver of the car is required to be established even in claims under Section 163-A of the M.V.Act. When the petition filed under Section 163-A of M.V.Act, in view of the principle laid down in Sarojamma's case referred supra and as per the principle laid down by this Court in **Chintala Krishna Murthy (died) and others (L.Rs.) v. K. Surya Prakas Rao and another**⁴, the compensation shall be awarded applying the guidelines of Table under Schedule-II of Section 163-A of M.V.Act.

16. For assessment of compensation under the head of loss of future earning on account of permanent disability, the relevant factors are the percentage of disability, age, income of the injured and multiplier applicable to the age group of the injured.

³ AIR 2012 SC 797

⁴ 2012 (6) ALT 27

17. Here, the petitioner sustained three fractures. Certainly, those fractures would create physical disability and it may reduce her capacity to engage in household services to serve the family members. But, that itself is not a ground to conclude that the petitioner is suffering from functional disability. However, the petitioner admittedly a house wife whose services cannot be valued. As per the Table under Schedule-II of M.V.Act, the upper limit of annual income is Rs.40,000/- when a petition filed under Section 163-A of M.V.Act. The petitioner was aged about 42 years as on the date of filing of petition. As the petitioner being a housewife, her income can be taken at Rs.3,600/- per month. Even if she suffered from any disability either physical and functional disability, the disability is not assessed by PW.3-Doctor, the disability may be around 25% and the applicable multiplier to the age group of 40-45 years is '15' and, thus, the petitioner is entitled to $\text{Rs.}3600 \times 25/100 \times 15 \times 12 = 1,62,000/-$.

18. The Tribunal awarded compensation of Rs.1,50,000/- for three fractures, Rs.50,000/- towards pain and suffering and Rs.50,000/- towards extra nourishment and medicine. The Tribunal also awarded a sum of Rs.2,04,714/- towards medical expenses and in all the Tribunal awarded compensation of Rs.4,54,714/-.

19. But, when the petition is filed under Section 163-A of M.V.Act, the injured is entitled to Rs.5,000/- for grievous injury and Rs.1,000/- for non-grievous injury and Rs.15,000/- towards medical expenses i.e., actual expenses incurred supported by bills/vouchers but not

exceeding as one time payment. In all the petitioner is entitled to 1,62,000 + 15,000 + 15,000 = 1,92,000/- (Rupees one lakh ninety two thousand only). Thus, the compensation awarded by the Tribunal is far exceeding the compensation, which the petitioner is entitled under Section 163-A of M.V.Act. Since there is no appeal by respondents, I am not inclined to interfere with the amounts awarded by the Tribunal.

20. Accordingly, the appeal is dismissed at the admission stage. No order as to costs.

14. Miscellaneous petitions pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

18th July 2017.

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