

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 173 of 2006

JUDGMENT:

This appeal is arising out of the Award and Decree dated 21.10.2005 passed in O.P.No.224 of 2004 by the Chairman, Motor Accidents Claims Tribunal-cum-II Additional District Judge, Madanapalle. The appellant is the petitioner, and the respondents are respondents in the O.P.

2. The appellant has filed a claim petition O.P.No.224 of 2004 claiming compensation of Rs.2,00,000/- for the injuries sustained by him in a motor vehicle accident that occurred on 06.06.2003. Brief facts of the case are that, on the fateful day, while the petitioner was proceeding in a lorry bearing No.AP-03-T-9914 as a Cleaner, the lorry met with an accident due to rash and negligent driving by the driver of the lorry and dashing it against the tractor bearing No.AP-31U-104. The petitioner sustained fracture injury to his right leg and was shifted to Government Hospital, Bangarupalem, and from there he was shifted to Chittoor and there he took treatment in Headquarters Hospital, Chittoor. Later, he had taken treatment from Dr. M. Sanjeeva Rayudu in Madanapalle. On his complaint, the police registered a case in Crime No.59 of 2003 for the offences under Sections 337 and 338

IPC and after investigation filed chargesheet on the file of Judicial Magistrate of First Class, Chittoor, which was taken on file as C.C.No.229 of 2003. The 1st respondent, the owner of the crime lorry, had remained ex parte. The 2nd respondent-insurance company filed counter denying its liability on the ground that the rash and negligent driving of the driver of the offending lorry is not proved and the petition is bad for non-joinder of the owner of the tractor involved in the accident, and that the quantum of compensation claimed by the petitioner is highly excessive. The Tribunal, on consideration of the evidence on record held the issue No.1 in favour of the petitioner holding that the accident occurred due to the rash and negligent driving of the offending lorry and held respondents 1 and 2 liable for payment of compensation and awarded compensation of Rs.40,000/- with interest at 7.5% per annum from the date of petition till realisation. Aggrieved by the quantum of compensation, the appellant-injured filed this appeal mainly contending that he has suffered permanent disability due to the injuries received by him in the accident. He filed Ex.A5 permanent disability certificate issued by PW2 Dr. M. Sanjeeva Rayudu, but the Tribunal did not award any compensation for the disability suffered by him. It is further argued that the Tribunal has not granted medical

expenditure of Rs.95,000/- claimed by him though there is sufficient evidence to prove his claim.

3. Sri T. Ramulu, learned counsel for the respondent-insurance company contended that the Tribunal has rightly disallowed the claim of the petitioner with regard to the permanent disability, and also disbelieved the evidence of medical officer PW2 in the light of his cross examination and, therefore, the compensation awarded by the Tribunal is adequate.

4. The point for consideration in this matter is whether the appellant is entitled for enhancement of compensation awarded by the Tribunal.

5. At the outset, the appellant has filed a petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.2,00,000/- on account of the injuries sustained by him in the motor vehicle accident. The Tribunal, on assessing the evidence of witnesses PWs.1 and 2, and the documents Exs.A1 to A8, and Ex.B1, has awarded compensation of Rs.40,000/-. It is pertinent to note that the Tribunal has disbelieved the evidence of PW2, the medical officer without giving cogent reasons. The reasons given by the Tribunal for disbelieving the evidence of PW2 regarding

permanent disability suffered by the petitioner, due to the injuries received by him in the accident, are not acceptable.

6. In paragraph 11 of the impugned order, the Tribunal has almost reached a conclusion that there was 25% disability suffered by the petitioner for the injuries sustained by him in the accident in the light of the disability certificate Ex.A5 issued by the medical officer PW2 Dr. Sanjeeva Rayudu. In the latter part of paragraph 11, the Tribunal discussed the cross examination of PW2 and arrived at the conclusion that there is no basis for PW2 to give an opinion about the disability suffered by the injured.

7. The findings of the Tribunal is that PW2, on physical examination of the injured PW1, has issued Ex.A5, so it cannot be the basis for assessment of disability. The other finding of the Tribunal is that the X-rays, Ex.A8, was not considered for assessing the disability by the medical officer PW2. Therefore, the Tribunal suspected the opinion of the medical officer PW2 who has issued certificate Ex.A5 stating that the petitioner has suffered 25% disability because of the injuries suffered by him in the accident. It is pertinent to note that PW2 has stated in his testimony that he has issued Ex.A5 permanent disability certificate and he had also stated that because of the fracture injury, he was limping. In fact, PW2 is the Superintendent of Area

Hospital. His testimony clearly reveals that the witness is an independent medical officer and there is no necessity for him to give false evidence. The testimony of PW2 in his chief examination and cross examination is as under:

“Chief Examination:

I have been working as Medical superintendent, Area Hospital Madanapalle since 9.9.98. On 25-11-03 I examined PW-1 who presents in the court hall now (Witness had identified PW-1 in open court) After examining PW-1 I issued Ex.A-5 permanent disability certificate assessing the permanent disability @ 25%. PW-1 has got limping also. He cannot attend agri. Operations on account of limping. He cannot work as cleaner as he is not in a position to board the lorries. He cannot carry weights also on his shoulder. But he can attend his routine work. PW-1 had undergone operations twice in a pvt. nursing home and the cost of such expenditure was Rs.18000/- to 20000/-. Removal of implant would cost Rs.3,000/- to 4000/-.

Cross by R-2:

I do not have any record to prove the above operations undergone by PW-1 and also the expenditure expended by him. I issued Ex. A5 about two years back. The fracture must have been consolidated this time but there will not be any decrease in the percentage of permanent disability on account of limping. It is not true that the percentage of permanent disability as assessed under Ex.A-5 is excessive. I have given Ex.A-5 only on physical examination of PW-1. It is not true that I issued Ex.A-5 to accommodate PW1. It is not true that PW-1 can attend his work of cleaner.”

8. The testimony of PW2 does not reveal that he has given a false certificate or he has no basis for issuing disability certificate assessing the disability at 25%. When a competent Civil Surgeon

has issued a disability certificate, it cannot be doubted by a Tribunal unless there is material on record to show that the certificate is a fake or false certificate obtained for gain of the petitioner. There is no material on record to impeach the credit of medical officer PW2. The analysis of the Tribunal with regard to the evidence of PW2 is highly unreasonable and it has gone beyond the limits and entered into the arena of medical field and substituted its opinion in place of medical opinion without impeaching the credit of medical witness PW2. Therefore, the findings of the Tribunal are liable to be set aside. Consequently, the appellant is entitled for compensation taking into account his 25% permanent disability suffered by him due to fracture injury.

9. The appellant was said to be a Cleaner by profession and it is stated that he was earning Rs.150 per day as Cleaner, apart from earning Rs.35,000/- per year from agriculture. The Tribunal has disbelieved the version of the appellant with regard to his income. However, the Tribunal ought to have taken notional income of the appellant as there was sufficient proof that he was working as Cleaner in the offending lorry and while he was travelling on the lorry, it met with an accident. Therefore, the notional income of the appellant can be taken at Rs.2,000/- per month.

10. Taking the notional income of the appellant at Rs.2,000/- per month, the loss of earnings due to 25% permanent disability would be Rs.500/- per month. He was 25 years old by the date of accident and, therefore, the appropriate multiplier as per **Sarla Verma v. Delhi Transport Corporation**¹ would be '18'. Therefore, the total loss of earnings due to 25% permanent disability, as per the ratio laid down in **Sarla Verma** would come to Rs.500 x 12 x 18 = Rs.1,08,000/-.

11. Therefore, on consideration of the evidence on record, the award passed by the Tribunal is enhanced as shown in the following tabular format.

S.No	Head	Compensation awarded by the Tribunal	Compensation enhanced
1.	Grievous Injury	Rs.12,500/-	Rs.25,000/-
2.	Medical expenses, extra nourishment, transportation and other expenses	Rs.12,500/-	Rs.15,000/-
3.	Pain & Suffering	Rs.15,000/-	Rs.15,000/-
4.	Loss of earnings	Nil	Rs.1,08,000
	Total	Rs.40,000/-	Rs.1,63,000/-

12. **IN THE RESULT**, the appeal is partly allowed by awarding compensation of Rs.1,63,000/- with proportionate costs and interest at 7.5% per annum from the date of petition till

¹ (2009) 6 SCC 121

realisation. The respondent-insurance company is directed to deposit the compensation within one month from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the same. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

10th November, 2017

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THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



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