

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A No. 754 of 2010

JUDGMENT:

This appeal is arising out of the order dated 12.11.2009 in M.V.O.P.No.492 of 2003 on the file of I Additional District Judge-cum-Chairman, Motor Accident Claims Tribunal, Chittoor, (for short, 'the Tribunal). The claimant in the said MVOP is the appellant herein.

2. The appellant-claimant filed MVOP No.492 of 2003 before the Tribunal seeking compensation of Rs.5,00,000/- on account of the injuries and disability sustained by him in a motor vehicle accident that occurred on 04.07.2003. Brief facts of the case are that on 04.07.2003, at about 8.00 AM, while the appellant, who is a resident of Vajjireddipalle village in Purchaiaput mandal of Chittoor district, was proceeding from his village on his Hero Honda motor cycle bearing No. TN-04-Z-1931 to Tirupati, along with his employee by name A. Munaswamy as pillion rider, and when they reached Pathakaluva village, on Tirupati-Chandragiri road, the driver of the 1st respondent lorry bearing No. AP-03-V-2646, drove the lorry in a rash and negligent manner and came in opposite direction and dashed the vehicle of the appellant, due to which the appellant and the pillion rider fell down and sustained injuries all over their

bodies. The appellant was immediately shifted to SVRR Hospital, Tirupati, and after administering first aid, he was taken to CMC Hospital, Vellore, where he was treated as in-patient for 10 days and skin grafting was done and subsequently he took treatment as out-patient. It is stated that the appellant cannot walk without crutches and for the disability sustained in the accident, he is unable to do agriculture and lost his income. Alleging that the accident occurred due to the rash and negligent driving of the driver of the 1st respondent lorry, the appellant filed the aforesaid MVOP claiming a compensation of Rs.5,00,000/- against the respondents.

3. The 1st respondent remained *ex parte*. The 2nd respondent-Insurance company filed written statement denying its liability on the ground that his liability is subject to existence of valid policy and valid vehicle documents at the time of accident.

4. The appellant got himself examined as PW1, and got examined PWs.2 to 5 the doctors who treated him. On his behalf, Exs.A1 to A13 were marked. On behalf of the 2nd respondent, Exs.B1-copy of policy, and Ex.B2-Driving licence extract of the driver of offending lorry were marked.

5. The Tribunal on consideration of the evidence available on record, awarded a sum of Rs.1,81,500/- with interest at 7.5% per annum from the date of petition till deposit.

6. The appellant being aggrieved by the award, preferred this appeal for enhancement of compensation.

7. Heard learned counsel for the appellant and learned Standing Counsel for the 2nd respondent-Insurance company.

8. Learned counsel for the appellant contended that the Tribunal has not considered the disability of 25% suffered by the appellant while assessing the compensation for loss of earnings. It is contended that the compensation awarded under the Heads is very meager and it requires to be enhanced.

9. It is relevant to refer to the injuries suffered by the appellant and the evidence of four medical officers examined to prove his injuries and disability. PW2 is a Casualty Medical Officer, SVRRGG Hospital, Tirupati, at the relevant time. He issued Ex.A2-Wound certificate. As per his evidence, the appellant was admitted in SVRRG Hospital, Tirupati, on 23.07.2003 with the following injuries.

- i) Lacerated wound with avulsion of skin and explosive of bones and tender with loss of second toe involving the whole dorsum of foot on the right side;**
- ii) Abrasion 4 x 2 cm below right elbow;**
- iii) Abrasion 2 x 2 cm on dorsum of right hand;**
- iv) Pain and deformity of right little finger**

10. The appellant got examined PW3, who is a Civil Surgeon in Government Hospital, Madanapalle, who was also a Member of District Medical Board, Chittoor, since 2000. PW3 issued Ex.A12-Disability certificate stating that the appellant has suffered permanent physical disability of 25%. He clarified in his evidence that the loss of second toe results in 5% disability, loss of extension of toes results in 10% disability, and the total disability was 25%.

11. The appellant got examined PW4 who was an Associate Professor at CMC Hospital, Vellore. It is his testimony that he examined the appellant and treated him in Casualty and later shifted him to the ward on 06.07.2003. He has spoken about the treatment given and the tests conducted on the appellant and about patient history.

12. The appellant also got examined PW5 who is an Associate Professor in the Department of Plastic Surgery, CMC Hospital, Vellore. His evidence reveals that the appellant suffered defect

of skin i.e., loss of skin over dorsum of right foot and amputation of 2nd toe. He further testified that the appellant was admitted in their unit on 30.08.2003 and was discharged on 12.09.2003.

13. The evidence of medical officers PWs.2 to 5 clearly reveals that the appellant suffered 25% disability and the said fact is supported by Ex.A12-disability certificate, as per PW2.

14. The Tribunal in paragraph 21 of the impugned judgment, the contention of the 2nd respondent was as follows:

“On the other hand, it is contended by the learned counsel for 2nd respondent that the disability of 25% assessed by PW3 is much excessive and exorbitant and the CMC hospital, Vellore had issued Ex.A5 consolidated bill for excess amount in order to help the petitioner to get more compensation. Thus, it is submitted by the learned counsel for 2nd respondent that the claim of petitioner is much exorbitant.”

15. In fact, the 2nd respondent has not adduced any evidence to substantiate his contention. PW3, who is a qualified medical officer and competent to assess the disability. He has assessed the disability as 25%. The Tribunal, without following the due procedure established and awarded a lumpsum amount of

Rs.35,000/-. In certain decisions of the apex Court, the mode of calculation of loss of earning due to disability, is enunciated.

16. In view of the ratio laid down by the Apex Court in *Ramesh Singh v. Satbir Singh*¹, *New India Assurance Company Ltd. v. Smt. Shanti Pathak*², *Oriental Insurance Co. Ltd. v. Syed Ibrahim*³, *New India Assurance Co. Ltd., v. Kalpana (Smt)*⁴, a decision of High Court of Karnataka at Bangalore in *Sri Appayachari v. K. Vadivel and the New India Assurance Company Ltd., rep. by its Manager*⁵ and a decision of High Court of Calcutta in *United India Insurance Co. Ltd. v. Shri Buro Mahara*⁶, the notional income of the appellant-injured being a labourer can be taken into consideration as Rs.3,000/- per month. As the appellant suffered 25% disability, the loss of future earnings per year is Rs.9,000/-. As the age of the appellant at the time of accident was 31 years, the appropriate multiplier as per the decision of the Hon'ble Supreme Court in *Smt. Sarla Verma and others v. Delhi Transport Corporation and*

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

another⁷ case would be '16'. Therefore, the loss of earnings due to the disability sustained by the appellant is Rs.16 x 9,000/- which would come to Rs.1,44,000/-. Therefore, on consideration of the evidence, the appellant is entitled to Rs.1,44,000/- towards loss of earnings for the 25% disability sustained by him. Therefore, the amount of Rs.35,000/- awarded by the Tribunal for disability is enhanced to Rs.1,44,000/-.

17. The Tribunal, in paragraph 22 of the impugned judgment, by considering the age and avocation of the petitioner and also the nature of injuries and disability sustained by him, awarded a compensation of Rs.39,000/- towards pain and suffering, and the same does not require any interference.

18. The Tribunal, in paragraph 25 of the impugned judgment, has awarded an amount of Rs.50,000/- towards medical expenses, extra nourishment, special diet and attendant charges. However, in view of Ex.A5-consolidated medical bills issued by CMC Hospital for Rs.42,949, and keeping in view the nature of injuries suffered, the compensation towards medical expenses, extra nourishment, special diet and attendant charges is enhanced to Rs.60,000/-. The Tribunal awarded Rs.15,500/- towards transport charges and also Rs.12,000/-

⁷ (2009) 6 SCC 121

towards loss of earnings during the period of treatment, and the same does not require any interference.

19. Therefore, the compensation awarded by the Tribunal is enhanced as shown in the following tabular format.

S. No	Head	Compensation Awarded by the Tribunal	Compensation enhanced
1.	Medical expenses, extra nourishment, special diet and attendant charges	Rs.50,000	Rs.60,000/ -
2.	Skin grafting and wound debridement	Rs.30,000/-	Rs.30,000/ -
3.	Loss of earnings	Rs.12,000/-	Rs.12,000/ -
4.	Loss of future earnings due to 25% permanent disability	Rs.35,000/-	Rs.1,44,000/ -
5.	Pain and suffering	Rs.39,000	Rs.39,000/ -
6.	Transport charges	Rs.15,500/-	Rs.15,500/ -
	Total	Rs.1,81,500/ -	Rs.3,00,500/ -

20. In the result, the appeal is partly allowed, by enhancing the compensation awarded by the Tribunal from Rs.1,81,500/- to Rs.3,00,500/-, with interest at 7.5% and proportionate costs from the date of petition till the date of realization. The respondents are directed to deposit the balance amount within two months from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the entire amount after expiry of appeal time. No costs. Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE G. SHYAM PRASAD

Dated: 02.2017
KSM

THE HON'BLE SRI JUSTICE G. SHYAM PRASAD



M.A.C.M.A No. 754 of 2010

February, 2017

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