

THE HON'BLE MS. JUSTICE J. UMA DEVI

MACMA No.2596 of 2005

JUDGMENT:

Against the order dated 28.11.2003 passed by the learned Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge, Nalgonda, in O.P.No.743 of 2000 which was filed by appellant herein claiming compensation of Rs.2,50,000/- for the injuries received by him in a motor vehicle accident occurred on 07.03.2000, the present appeal was preferred under Section 173 of the Motor Vehicles Act, 1988.

For convenience sake, the parties hereinafter will be referred to as petitioners/respondents as they are arrayed before the Tribunal in O.P.No.743 of 2000.

The facts of the case are briefly stated as under:

That on 07.03.2000, while the petitioner was travelling in an auto bearing No.AP24 U 1167 along with others to go to Hyderabad from Chityal, when the said auto reached Jillellagudem Village, it fell down under a culvert due to rash and negligent driving of it by its driver, and as a result of it, the petitioner and other passengers of the auto fell down and sustained bleeding injuries. The petitioner incurred heavy expenditure towards treatment and became incapable of attending to the work of driving which he was doing prior to the accident.

Hence, he laid the claim for Rs.2,50,000/- as against the owner and insurer of the auto bearing No.AP24 U 1167 due to negligent driving of which he sustained severe bleeding injuries.

The case was not contested by the owner of the crime vehicle. The insurance company alone contested the case and filed a detailed counter denying the occurrence of the accident, age, avocation and income of the petitioner and nature of injuries received by him in the alleged accident and took a plea of defence that the terms and conditions of the policy pertaining to crime vehicle were grossly violated by the vehicle owner by handing over it to a person who was not possessing valid and subsisting driving licence.

Based on the above pleadings, the Tribunal framed three issues. The petitioner to prove his case got examined him as P.W.1 and took steps to examine P.W.2 through an advocate Commissioner. Exs.A.1 to A.7 were marked through P.W.1 and Exs.C.1 and C.2 were marked through P.W.2.

The main contention of the petitioner was that though the Tribunal appreciated the evidence on record in a proper perspective and arrived at just conclusion that he is entitled to get compensation of Rs.3,24,000/-, it restricted the claim to Rs.2,50,000/- though in number of cases, it was held by the Apex Court and this Hon'ble Court that fair and reasonable

compensation is to be awarded to the victims of a road accident taking into consideration of all the relevant factors and the evidence on record and that the Tribunal has got the powers to award more compensation amount than the amount claimed by the petitioner.

Thus the appellant seeks to contend that the Tribunal is not correct in restricting his compensation to Rs.2,50,000/- and it ought to have awarded reasonable compensation amount of Rs.3,24,000/- as has been arrived by it taking into consideration the evidence available in the case record which clearly speaks to the fact that he has become disabled permanently and he is incapable of attending to the work of driving which he was doing prior to his involvement in the accident.

The learned Standing Counsel appearing for respondent No.2 – insurance company would contend that the order impugned in the present case needs no intervention and states that the order passed by the Tribunal deserves to be affirmed without any modification.

Upon hearing the submissions of both sides, it is noticed that there is no much dispute so far as the involvement of the offending auto in the accident dated 07.03.2000 and receiving of injuries by the petitioner in the above-mentioned accident. There is also no controversy on the aspect of negligence attributed to

the auto driver. The evidence on record is clear and categorical so far as the aspect that the claimant/P.W.1 was taken to Osmania General Hospital, Hyderabad and there, he was treated as an in-patient for a period of one month. While he was undergoing treatment in the said hospital, he was advised to undergo operation for amputation of left leg up to knee level as both bones of his left leg as well as knee cap were fractured. From Osmania General Hospital, he was taken to Gandhi Hospital, Secunderabad, for treatment and there, he took treatment for a period of three months and during the said period of three months, he underwent surgeries for 5 times for the multiple fractures he received to his left leg and a steel rod of 45” was inserted. He also underwent surgeries for the injuries to his right leg and a steel rod was inserted in it and that the rods inserted are still in tact. Due to removal of knee cap of his left leg, the movements of it are totally restricted. The evidence of P.W.2 clinchingly establishes the fact that the petitioner is suffering from the disability at 45% and the same is permanent in nature. Because of the fracture injuries received to his legs, he is not in a position to attend to the work of driving. Thus, there cannot be any hesitation for this Court to hold that he has lost the source of his livelihood.

The petitioner has produced Ex.A.7 - driving license to establish that he was a driver by profession. The Tribunal by fixing the income of the petitioner at Rs.1,500/- per month held that he is entitled to get Rs.6,000/- towards loss of past earnings. Since the petitioner has become disabled permanently, the Tribunal by applying the multiplier '18' (as he was aged about 26 years by the date of accident) came to the opinion that an amount of Rs.3,24,000/- is to be awarded under the head of loss of future earnings. The Tribunal though arrived at a just conclusion that an amount of Rs.3,24,000/- can be awarded to the petitioner under the head of loss of future earnings, it had awarded the compensation amount of Rs.2,50,000/- only as he did not make any request for enhancement of compensation.

The Larger Bench of this Court in the case of **ADAM INDUR MUTTEMMA AND OTHERS v. RATHOD REDDIA AND OTHERS**¹ while answering to the question “whether the Tribunal/Court can award compensation under the Motor Vehicles Act over and above the amount claimed by the claimants though subject to the payment of Court fee etc.”, held as follows:

“Thereafter, the very same question fell for consideration of the Apex Court in **Nagappa v. Gurudayal Singh and others** {2003(1) ALD 1 (SC) =

¹ 2015(4) ALD 585 (LB)

(2003) 2 SCC 274} and the question was answered in affirmative holding that in the Motor Vehicles Act, 1988, there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In appropriate case, wherefrom the evidence brought on record, if the Tribunal/Court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. The only embargo is it should be just compensation, that is to say, it should be neither arbitrary or fanciful nor unjustifiable from the evidence. Such observations were made in the light of the provisions contained in Sections 166(1) and (4); 158(6) and 168 of the Motor Vehicles Act, 1988. This view was thereafter reiterated by the Supreme Court in **Rajesh and others v. Rajbir Singh and others** {(2013) 9 SCC 54}; **Sanjay Verma v. Haryana Roadways** {(2014) 3 SCC 210} and **Jitendra Khimshankar Trivedi and others v. Kasam Daud Kumbhar and others** {2015 (3) ALD 141 (SC) = {(2015) 4 SCC 237}. Thus, in view of the law laid down by the Supreme Court in the aforementioned judgments, the question referred to the Larger Bench must be answered in the affirmative.”

In the instant case, the Tribunal upon consideration of the fact that the petitioner had taken medical treatment for four to five months in Osmania General Hospital, Hyderabad and Gandhi Hospital, Secunderabad, came to the opinion that awarding of a sum of Rs.75,000/- towards medical expenditure is just and reasonable. It also held that the petitioner is entitled to

get a sum of Rs.6,000/- towards loss of earnings during the period of his hospitalization etc. The Tribunal though had undertaken the task of holding detailed discussion as to the nature of injuries sustained by the petitioner for which he had taken treatment for considerable period and that he became disabled permanently on account of fracture injuries he sustained to both his legs for which he took treatment for more than three months, held that he is entitled to get Rs.3,24,000/- under the head of loss of earnings taking into consideration of the abundant evidence available in the case record to believe that he became incapable of attending to the work of driving etc., restricted his claim to Rs.2,50,000/-.

Since the above findings recorded by the Tribunal are contrary to the evidence on record and the legal proposition enunciated in the case law cited above, this Court is of the opinion that the petitioner is entitled to get a sum of Rs.3,24,000/- under the head of loss of future earnings apart from Rs.15,000/- under the head of medical expenditure, Rs.6,000/- towards loss of past earnings, Rs.75,000/- towards pain and suffering as the petitioner stated to have sustained several fracture injuries and a sum of Rs.6,861/- towards medical expenditure taking into consideration the amount spent by him towards medicines etc.,

has been established by way of production of Ex.A.5 – bunch of Medical Bills. Thus, the petitioner is entitled to get more compensation of Rs.4,11,861/- as against Rs.2,50,000/-. The petitioner shall pay deficit Court fee on the differential compensation amount.

In the result, the appeal is allowed enhancing the compensation from Rs.2,50,000/- to Rs.4,11,861/- subject to the payment of deficit Court fee on the differential compensation. The enhanced amount of compensation carries interest @ 7.5%. The owner and insurer of the offending vehicle are held jointly and severally liable to pay the above compensation amount together with interest @ 7.5% from the date of filing the petition till realization.

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

J. UMA DEVI, J

7th APRIL, 2017.

kvni