HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No.1658 OF 2006

JUDGMENT:

1. This Appeal is arising out of the order, dated 09.12.2005, in M.V.O.P. No.1160 of 2001 on the file the Chairman, Motor Vehicles Accidents Claims Tribunal-cum-II Additional District Judge, Guntur (for short, 'the Tribunal').

2. Appellant herein is the petitioner-injured, 1st respondent herein is the owner and 2nd respondent herein is the insurer of the Lorry bearing No.APG 8064. The petitioner has filed a petition before the Tribunal, under Sections 163-A, 166 and 140 of the Motor Vehicles Act, 1988 (for short, 'the Act'), claiming compensation of Rs.2,50,000/- on account of the injuries sustained by him in a motor vehicle accident occurred on 20.05.2001.

3. The brief facts of the petition are that, on 20.05.2001 at about 05:30 p.m., while the appellant along with three others were traveling in the crime vehicle as loading and unloading coolies with the load of metal (stones) from Meduru to Vangaveedu of Khammam District, the driver of the crime vehicle drove the same at high speed in a rash and negligent manner and hit the bridge of Palavagu and they fell down from the bridge at the outskirts of Krishnapuram village. As a result of which, the appellant sustained severe injuries including fracture of left thigh bone, compound fracture of both bones of left leg below the knee joint, dislocation of left knee cap with loss of muscle and other multiple injuries all over the body. The other coolies, who were traveling along with the

appellant, also sustained injuries and one lady passenger succumbed to the injuries. Immediately, the appellant was shifted to Government Hospital, Madhira. A case in Crime No.17 of 2001 was registered by the S.H.O. Madhira P.S. against the concerned. Hence, the appellant filed by the petition seeking compensation of Rs.2,50,000/-

4. Respondent No.1, owner of the crime vehicle, remained *ex parte* before the Tribunal.

5. Respondent No.2 filed counter denying the claim of the appellant.

6. The Tribunal, after framing the issues and, on consideration of the pleadings and evidence of the witnesses P.Ws.1 and 2 and the documents Exs.A-1 to A-9 on behalf of the appellant and R.W.1 and Exs.B-1 and B-2 on behalf of the 2nd respondent, granted compensation of Rs.1,14,500/- with proportionate costs and interest at the rate of 6% p.a. from the date of petition till realization making both the respondents jointly and severally liable to pay the compensation.

7. Being aggrieved by the quantum of compensation, the appellant preferred the instant Appeal seeking enhancement of the compensation.

8. Heard the arguments of Mr. A. Rajendra Babu, learned counsel for the appellant, and Mr. B. Devanand, learned standing counsel for the 2nd respondent-insurance company.

9. The point for consideration in this matter is whether there are sufficient grounds for enhancement of compensation awarded by the Tribunal?

10. Learned counsel for the appellant submits that the Tribunal has taken into consideration the 50% disability suffered by the appellant and awarded compensation; whereas, P.W.2, the medical officer, categorically stated in his evidence that the disability was to an extent of 55% and the Tribunal, also observed in Para 14 of its order that as per the evidence of P.W.2 the appellant suffered 55% disability, which is partial and permanent in nature and he cannot do hard work like carrying weights. However, considering the further evidence of P.W.2 that the appellant can walk at that time without any aid, fixed the percentage of disability at 50%, which finding of the Tribunal does not require any interference.

11. Learned counsel for the appellant further submitted that the Tribunal rightly considered the age of the appellant as 18 years, referring to various documents, but erroneously fixed the multiplier '15' referring to the II Schedule of the Act, while assessing compensation. Even as per the II Schedule of the Act, the relevant multiplier applicable to the age group of 15 to 20 years is 16 but it is not known where from the Tribunal picked up the multiplier '15' and hence the multiplicand picked up by the Tribunal is absolutely wrong. In view of the principle laid down by the Apex Court in *Smt. Sarla Verma and others Vs. Delhi Transport Corporation and*

another[1], the relevant multiplier applicable to the age group of the appellant between 15 to 20 years is '18'.

12. Coming to the income of the appellant, the Tribunal assessed the same as Rs.15,000/- p.a., referring to the provisions of the II Schedule of the Act. But, the Tribunal ought to have fixed the monthly income of the appellant as, at least, Rs.3,000/- p.m. Admittedly, the appellant was a bachelor of 18 years and he has a long life ahead and he lost the chances of getting married in future. Hence, taking into consideration the income of an unskilled labourer as per the Minimum Wages Act, 1948, and also in view of the principles laid down by the Apex Court in *Ramesh Singh Vs. Satbir Singh*[2], *New India Assurance Company Limited Vs. Smt. Shanti Pathak*[3], *Oriental Insurance Company Limited Vs. Syed Ibrahim*[4], *New India Assurance Company Limited Vs. Smt. Kalpana*[5], a decision of High Court of Karnataka at Bangalore in *Sri Appayachari Vs. K. Vadivel and the New India Assurance Company Limited, Rep. by its Manager*[6] and a decision of High Court of Calcutta in *United India Insurance Company Limited Vs. Shri Buro Mahara*[7], income of the appellant in the instant case can be fixed as Rs.3,000/- p.m. and, accordingly, his annual income would come to Rs.36,000/-. In *Raj Kumar Vs. Ajay Kumar and another*[8], the Apex Court explained about the assessment of functional disability and

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[1] 2009 (6) SCC 121
[2] MANU/SC/7089/2008
[3] MANU/SC/7776/2007
[4] MANU/SC/7915/2007
[5] (2007) 3 SCC 538
[6] MANU/KA/3721/2013
[7] MANU/WB/0139/2015
[8] 2011 (1) SCC 343

no necessity to deduct any amount towards personal and living expenses of the appellant-injured in the case of fatal accidents resulting in deaths. Accordingly, if the notional annual income of Rs.36,000/- is multiplied with the relevant multiplicand '18', the same would come to Rs.6,48,000/-. The appellant has suffered 55% disability, as per the evidence of P.W.2, and 55% out of the notional annual income of Rs.6,48,000/- is taken into consideration, the amount of compensation to be awarded under the head of permanent disability would come to Rs.3,56,400/- but the Tribunal erroneously fixed the disability at 50% and awarded Rs.1,12,500/-.

13. The appellant was admitted in Osmania General Hospital and underwent treatment for a period of four to five months. The Tribunal did not award any compensation towards transportation, attendant charges and extra nourishment, except awarding medical expenses of Rs.2,000/-. Therefore, on all these counts, an amount of Rs.10,000/- is awarded.

14. Considering the material available on record including the impugned order of the Tribunal, the following is the tabular form showing the amount of compensation awarded by the Tribunal and enhanced by this Court under each head:

Sl.No.	Name of Head	Awarded by Tribunal	Awarded by this Court
01.	Medical expenses, loss of earnings, attendant charges, transportation and extra nourishment	Rs.2,000/-	Rs.10,000/-
02.	Loss of earnings for 4 months	---	Rs.12,000/-
03.	Permanent disability	Rs.1,12,500/-	Rs.3,56,400/-
TOTAL		Rs.1,14,500/-	Rs.3,78,400/-

15. Learned counsel for the appellant disputed the rate of interest awarded by the Tribunal and sought for enhancement of the same from 6% to 7.5% p.a., relying on the decision of the Apex Court in *Dharampal and others Vs. U.P. State Road Transport Corporation*[9].

16. Thus, the appellant is entitled to the compensation more than claimed, in view of the principle laid down by the Apex Court in *Nagappa Vs. Gurudayal Singh*[10], where the Apex Court opined that since the provisions of the Act have no restriction to award the compensation more than claimed and in appropriate cases, where from the evidence brought on record, the Courts feel that the claimant is entitled to get more compensation than claimed, the Courts may award such compensation but the only embargo is that it should be '*just compensation*', but should neither be arbitrary, fanciful nor unjustifiable from the evidence.

17. Accordingly, the Appeal is allowed, enhancing the compensation awarded by the Tribunal from Rs.1,14,500/- to Rs.3,78,400/-, with subsequent interest at the rate of 7.5% p.a. from the date of petition till realization. However, the appellant is directed to pay the deficit court fee before the Tribunal prior to his withdrawal of the compensation amount. Respondents 1 and 2 are jointly and severally liable to pay the awarded compensation. Respondent No.2 is directed to deposit the compensation amount within two (2) months from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted

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[9] MANU/SC/7680/2008
[10] 2003 (2) SCC 274

to withdraw half of the amount and the remaining amount can be withdrawn after expiry of appeal time.

18. As a sequel, pending miscellaneous petitions, if any, shall stand closed as infructuous. No order as to costs.

G. SHYAM PRASAD, J

Date: 02.02.2017.
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HON'BLE SRI JUSTICE G. SHYAM PRASAD

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