

HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 1380 OF 2006

JUDGMENT:

1. This Appeal is arising out of the order, dated 22.02.2005, in O.P. No.183 of 2004 on the file of the Chairperson, Motor Vehicles Accidents Claims Tribunal-cum-I Additional District Judge, Karimnagar (for short, 'the Tribunal').

2. Appellant herein is the petitioner-injured in a motor vehicle accident. He filed O.P. No.183 of 2004 under Section 166(1)(a) of the Motor Vehicles Act, 1988 (for short, 'the Act') claiming compensation of Rs.5,00,000/- for the injuries sustained by him in the accident occurred on 21.08.2003.

3. The Tribunal, on consideration of the evidence of P.W.1, appellant, and P.W.2, the medical officer, and the documents Exs.A-1 to A-8 on behalf of the appellant and R.Ws.1 and 2 and the documents Exs.B-1 and B-2 on behalf of the respondents, awarded compensation of Rs.1,90,000/- with proportionate costs and interest at the rate of 9% p.a. from the date of petition till deposit, on all counts, as against the original claim of Rs.5,00,000/-.

4. The appellant, being aggrieved by the quantum of compensation, preferred this Appeal seeking enhancement of compensation.

5. Heard Mr. P. Sidhar Rao, learned counsel for the appellant, and Mrs. A. Malathi, learned counsel, representing Mr. V. Sinivasa

Rao, learned standing counsel for the 3rd respondent-insurance company.

6. The Appeal against the respondent Nos.1 and 2 herein was dismissed for default *vide* order of this Court on 28.06.2016.

7. The point for consideration in this matter is, whether there are sufficient grounds for enhancement of compensation?

8. Learned counsel for the appellant mainly submits that the compensation awarded by the Tribunal is without considering the functional disability suffered by the appellant. The appellant's right knee was amputated and he is unable to do any work as he was doing before. The Tribunal ought to have considered the 80% disability as 100% functional disability while awarding the compensation. It is further submitted that due to the disability suffered by the appellant, he was subsequently removed from service by his employer.

9. Learned standing counsel appearing for the 3rd respondent-insurance company contends that the Tribunal has properly appreciated the evidence on record and awarded adequate compensation, which does not require any interference by this Court.

10. It is further contended that the appellant was working as Peon at MVTC-II, SCC, Godavarikhani and earning an amount of Rs.10,000/- p.m. The appellant received injuries in the accident. He had taken treatment at Medbone Hospitals, Godavarikhani, at the

first instance, and later he was shifted to New City Hospital, Hyderabad, where a surgery was performed on him for the fractured injuries. Again he was admitted in the Hospital at Godavarikhani, where he had undergone treatment as inpatient for one and half months. His right leg above the knee was amputated at New City Hospital, Hyderabad.

11. P.W.2, the medical officer at Area Hospital, SCC Limited, Godavarikhani, deposed about the amputation of his right leg above the knee, and about the follow-up treatment taken by the appellant. The Tribunal, in Para 8 of its order, observed as follows:

“8. Hence, considering the above evidence it can be understood that the petitioner sustained injuries in the above motor accident and that his leg was amputated because of the fracture injury on his right leg.”

12. The Tribunal has awarded an amount of Rs.50,000/- under the head of pain and suffering, and an amount of Rs.50,000/- under the head of future amenities of life. On considering the evidence of P.W.2, the medical officer, an amount of Rs.50,000/- was awarded under the head of medical expenditure. Considering the document Ex.A-5, the Tribunal came to the conclusion that the appellant was working as Peon in SCC Limited, Godavarikhani and has taken his salary as Rs.5,000/- p.m. In fact, P.W.1 stated that he was working as Peon in SCC Limited, Godavarikhani. It appears that there is no evidence in proof of his salary of Rs.10,000/- p.m. Therefore, the Tribunal has rightly taken the salary of the petitioner as Rs.5,000/- p.m. and awarded an amount of Rs.40,000/- under the head of loss

of salary for eight months at the rate of Rs.5,000/- p.m. The Tribunal has awarded the notional compensation for loss of earnings.

13. The following is the tabular form showing the amount of compensation awarded by the Tribunal:

S.No.	Name of Head	Compensation awarded
01.	Pain and suffering	Rs.50,000/-
02.	Loss of future amenities of life	Rs.50,000/-
03.	Medical expenditure	Rs.50,000/-
04.	Loss of salary	Rs.40,000/-
TOTAL		Rs.1,90,000/-

14. Learned counsel for the appellant submits that he filed the disability certificate – Ex.A-4, issued by the Andhra Pradesh Vaidya Vidhana Parishad, which shows that the appellant suffered 80% disability due to amputation of his right leg up to knee level. The disability suffered by the appellant is permanent and partial in nature. The Tribunal has not considered the medical certificate issued by the Medical Board for assessing the loss of future earnings.

15. It appears that the Tribunal had totally ignored the certificate Ex.A-4, while assessing the compensation. Ex.A-4 certificate is issued by the competent authority and it is marked in the evidence. No doubt, the concerned medical officer, who issued it, did not appear before the Tribunal to say about the issuance of the certificate and its genuineness. However, the Tribunal ought to have taken into consideration the amputation of right leg up to knee level for assessment of disability. The disability of 80% appears to be on higher side. Therefore, at least 30% of disability would have been

taken into consideration for the purpose of calculation of compensation by the Tribunal.

16. If the salary of the appellant is taken into consideration as Rs.5,000/- p.m., his annual income would be Rs.60,000/-. 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 multiplier applicable to the age group of the appellant between 41 to 45 years is '14' and if the multiplicand '14' is multiplied with his annual income, it would come to Rs.8,40,000/-. In *Raj Kumar Vs. Ajay Kumar and another*², the Apex Court clearly explained about the assessment of functional disability and as such no necessity to deduct any amount towards personal and living expenses of the appellant-injured, as in the case of fatal accidents resulting in deaths. Ex.A-4 shows that the appellant suffered 80% permanent and partial disability but the concerned medical officer was not examined before the Tribunal. Hence, 30% disability for assessing the future loss of earnings can be taken in this case for the reason that amputation of right leg was only up to knee level but it is not total amputation of right leg. It is also pertinent to note that there is no evidence coming on record to show that Ex.A-4 disability certificate issued by the Government is a false document or obtained fraudulently. In the absence of any evidence brought on record against Ex.A-4, as per the evidence of P.W.2, the appellant is entitled for enhancement of compensation with regard to the disability.

¹ 2009 (6) SCC 121

² 2011 (1) SCC 343

17. In the light of the evidence of P.W.2, and Ex.A-4 coupled with Ex.A-1, certified copy of medical certificate and Ex.A-3, bunch of medical bills, it can safely be concluded that the appellant suffered 30% disability due to amputation of his right leg up to knee level. Keeping in view of the functional disability of amputation of right leg up to amputation level, it is appropriate to consider the disability suffered by the appellant as 30%, though the medical certificate Ex.A-4 shows the disability as 80%.

18. The following is the tabular form showing the amount of compensation awarded by the Tribunal and the amount enhanced by this Court under the head of loss of earnings:

S.No.	Name of Head	Awarded by Tribunal	Awarded by this Court
01.	Pain and suffering	Rs.50,000/-	Rs.50,000/-
02.	Future amenities of life	Rs.50,000/-	Rs.50,000/-
03.	Medical expenditure	Rs.50,000/-	Rs.50,000/-
04.	Future loss of earnings	Rs.40,000/-	2,52,000/-
		Rs.1,90,000/-	Rs.4,02,000/-

19. In the result, the Appeal is partly allowed. The order passed by the Tribunal is modified by enhancing the compensation awarded by the Tribunal from Rs.1,90,000/- to Rs.4,02,000/-. The amount of Rs.1,90,000/- shall carry interest at the rate of 9% p.a. from the date of petition till realization. The enhanced amount shall carry interest at the rate of 7.5% p.a. from the date of petition till realization.

20. Respondents 1 to 3 are directed to deposit the entire awarded amount within two (2) months from the date of receipt of

a copy of this judgment. On such deposit, the appellant is permitted to withdraw half of the amount and the balance amount shall be withdrawn after expiry of appeal time.

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

G. SHYAM PRASAD, J

Date: 31.01.2017.
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