

HON'BLE SRI JUSTICE G. SHYAM PRASAD

M.A.C.M.A. No. 1496 of 2012

JUDGMENT:

This appeal is arising out of the order dated 11.04.2008 passed in MATOP No.271 of 2005 by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-V Additional District Judge (FTC), Khammam at Kothagudem (for short, 'the Tribunal').

2. The appellant herein is the 2nd respondent-New India Assurance Company Limited in the above claim petition.

3. The claim petition was filed under Section 166 of the Motor Vehicles Act by the injured-claimant claiming compensation of Rs.1,50,000/- on account of injuries sustained by him in a motor accident occurred on 07.05.2004.

4. It is the case of the claim petitioner that while he was travelling on DCM Van bearing No.AP-20-T-6941 in the capacity of the cleaner, the accident has occurred and he sustained injuries in the accident. The Police registered a case against the driver of the crime vehicle under Sections 304-A and 337 of I.P.C. The Tribunal on consideration of the evidence has awarded compensation of Rs.73,600/- with interest at 7.5% per annum as against the claim of the petitioner Rs.1,50,000/-.

5. The appellant herein being aggrieved by the impugned award, has filed this appeal mainly on two grounds:

- 1) *That the claim petitioner-driver is a gratuitous passenger and not travelled in the capacity of the cleaner, as such, there is breach of the conditions of the insurance policy;*
- 2) *That the quantum of compensation awarded by the Tribunal is excessive.*

6. Heard the learned counsel for the appellant-Insurance Company and the learned counsel for the respondents.

7. The points that arise for consideration in this appeal are:

i) Whether the claimant-driver is a gratuitous passenger in the crime vehicle or driver in the capacity of the cleaner working on the vehicle?

ii) Whether the compensation awarded by the Tribunal is excessive?

8. The learned counsel for the appellant-insurance company mainly contended that the claimant was not the cleaner working on the DCM van involved in the accident, but, he travelled as a gratuitous passenger.

9. In this regard, the Tribunal has appreciated the evidence on record and properly arrived at a conclusion that the claimant has travelled as cleaner on the offending vehicle and not as a gratuitous passenger. The finding of the Tribunal in this regard does not require any interference. The Tribunal has rightly placed reliance on the evidence of the witnesses and arrived at a conclusion that the claimant has travelled in the offending vehicle as cleaner and not in the capacity of a gratuitous passenger. Therefore, I do not find any valid ground to interfere in the findings of the Tribunal in this regard.

10. The learned counsel for the appellant submits that the compensation claimed by the Tribunal is excessive. It is contended that the Tribunal has taken into consideration 15% of the disability without there being any disability certificate issued by any competent Medical Officer. The Tribunal has placed reliance on the evidence of PW-2, the medical officer who has come to the witness box and spoken about 15% disability suffered by the claimant. Therefore, it is contended that the disability of 15% suffered by the claimant is not proved and consequently, the amount

of compensation awarded for the disability at Rs.57,600/- is on higher side. In this regard, it is proper to refer to para 12 of the order of the Tribunal which is as under:

“12. Regarding the heads of compensation considering the nature and extent of injuries as seen from Ex.A-3 medical certificate, Ex.A-26 and A-27 x-ray films, Ex.-28 CT scan film, and as evidenced from the testimony of PW-2 Dr.T.Datta, it is clear that the two fracture injuries sustained by PW-1 resulted into 15% permanent disability PW-2 who is a competent Orthopaedic Surgeon and Professor of Orthopaedics after physically examining PW-1 assessed the same as 15% permanent disability and due to the said restriction of movement of the knee joint and the left ankle joint PW-1 is limping and he is unable to do hard work and walk for long distance and the same would definitely hamper the working capacity of PW-1 to the extent of the permanent disability sustained by him and the same will proportionately result in to loss of earning capacity to PW-1 and moreover, the same will also amounts to loss of amenity of life due to which PW-1 would be subjected to discomfort and loss of confidence as such I am of the considered opinion that just compensation is to be awarded to PW-1 for the 15% permanent disability sustained by him due to fractures. In awarding just compensation 15% disability it is settled law that the percentage of the disability is to be estimated in pecuniary terms basing on the annual income of the petitioner and the same is to be awarded to him. PW-1 has claimed a sum of Rs.2000/- as his monthly income as the cleaner on the crime vehicle and the same is also established from the material available on record vide the testimony of PW-2 the owner of the crime DCM van and also by the documentary evidence vide Ex.A-2 charge sheet. The monthly income claimed by the petitioner as the cleaner of DCM van is reasonable and the same can be accepted without any second thought. At the rate of Rs.2000/- monthly income the annual income of PW-1 would come to Rs.24,000/- and the 15% of the same would come to Rs.3,600/- to which the appropriate multiplier according to the age of the petitioner which is 16 if applied the same would come to Rs.57,600/- and the same is awarded to PW-1 towards compensation for 15% permanent disability. A sum of Rs.5000/- is awarded to the head injury. The material available on record shows that PW-1 sustained two grievous fractures and one head injury and he also underwent surgery and rod was inserted and by the same PW-1 must have definitely been subjected to considerable pain and suffering not only during his inpatient treatment for more than one month seven days but also during the further period of the healing of the fracture injuries sustained by him as such considering the same I am of the opinion that it

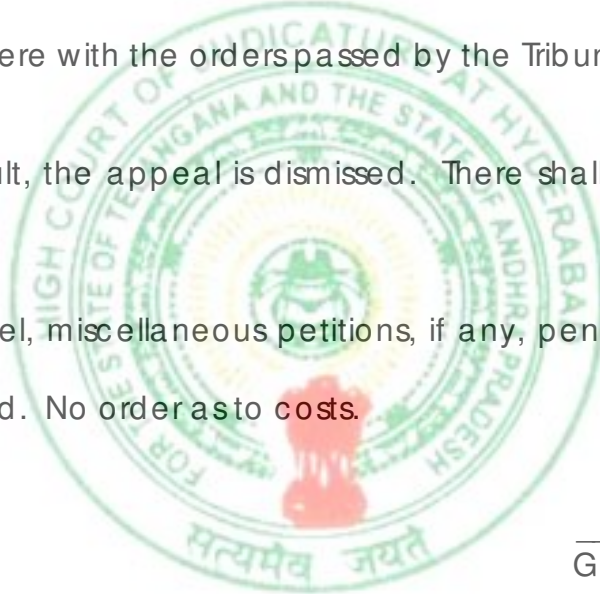
would be just to award considerable compensation towards pain and suffering. Therefore, a sum of Rs.10,000/- is awarded towards pain and suffering. PW-1 has claimed Rs.25,000/- towards medical expenditure and he also filed the medical bills vide Ex.A-25 to A-27 but only some of them are the relevant bills pertaining to the treatment of PW-1 belonging to Super Speciality Hospital and Osmania General Hospital and the said bills show incurring of Rs.5,365/- by PW-1. The x-ray film and CT scan filed by PW-1 show incurring of some expenditure by PW-1 for the CT scan film. The evidence of PW-2 Dr.Datta shows that PW-1 incurred pharmacy expenditure to a tune of Rs.10,000/-. So considering the above facts a sum of Rs.10,000/- is awarded towards medical expenditure considering the two grievous fractures sustained by PW-1 and the inpatient treatment of more than one month seven days I am of the opinion that PW-1 is entitled to compensation under the head loss of earnings at least for three months as the same must have been required for healing of the fracture injuries. Therefore, a sum of Rs.6,000/- is awarded under the head loss of earnings. The material available on record shows that PW-1 incurred expenditure for travelling for his shifting from the place of the accident to Govt.Hospital, Kothagudem and from there to Kinnera Super Speciality Hospital, Khammam and from there to Osmania General Hospital, Hyderabad and for the fracture injuries also PW-1 must have used some special diet, so considering the above fact, a sum of Rs.5,000/- is awarded towards travelling and extra nourishment. Thus, the total compensation awarded under all the heads would come to Rs.93,600/- and the same is awarded to PW-1 by way of adequate, reasonable and just compensation. The rest of the claim is dismissed without costs."

11. It is pertinent to note that the Tribunal has taken into consideration the evidence of PW-2 Dr.T.Dattu who had treated the injured for two fractures and other injuries sustained by him. According to the testimony of PW-2, the petitioner has suffered 15% permanent disability. The Tribunal held that PW-2 is a competent Orthopaedic Surgeon and Professor of Orthopaedics Department. He physically examined PW-1 and assessed the disability as 15% permanent disability. The reasoning is quite acceptable. It is stated that due to the restriction of the movements of the knee joint and left ankle joint, PW-1 was limping and he was unable to do hard work and walk for long distance and the same would hamper the

working capacity of PW-1. It is pertinent to note that PW-1 was a cleaner by profession and supposed to go in a lorry or van and help the driver throughout the journey. In view of his disability, he may not be able to get into the lorry and get down whenever required and he may not be able to walk longer distance to help the driver. Therefore, there is functional disability of 15% as rightly observed by the Medical Officer-PW-2. The findings of the Tribunal in this regard does not require any interference, in view of para 12 referred above. Therefore, I do not see any valid grounds to interfere with the findings of the Tribunal and hold that there is no force in the contention of the learned counsel for the appellant in this regard. On consideration of the entire evidence on record, I do not see any valid grounds to interfere with the orders passed by the Tribunal.

12. In the result, the appeal is dismissed. There shall be no order as to costs.

. As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed. No order as to costs.



G. SHYAM PRASAD, J

Date: 25.01.2017.
ccm

HON'BLE SRI JUSTICE G. SHYAM PRASAD



M.A.C.M.A. No. 1496 of 2012

Date:25.01.2017

ccm