HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 888 OF 2010

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, the Act), by the claimant being aggrieved by the order and decree dated 17.01.2010, passed in O.P.No.301 of 2008, by the II Additional Chief Judge-cum-Motor Accident Claims Tribunal, City Civil Courts, Hyderabad (for short, the Tribunal). The appellant filed O.P.No.301 of 2008, under Section 166 of the Act, claiming compensation of Rs.6,00,000/- on account of the injuries sustained by him in a motor vehicle accident. The Tribunal awarded an amount of Rs.2,53,446/-.

2. The brief facts of the petition are that on 14.06.2017 at about 9.00 pm., while the appellant and his brother-in-law were proceeding by walk from Mambhapur Village in Medak District towards bus stop, a lorry bearing No.AP13X 3762 (old No.KA39 979) was being driven by its driver in a rash and negligent manner at a high speed and dashed the petitioner. In the said accident, the petitioner fell down on the road and the lorry ran over his left leg, due to which, he sustained crush injuries to his lift leg, dislocation of left ankle joint, injuries to head and other multiple injuries all over his body. The Police, Jinnaram registered a case in Crime No.70/2007 under Section 337 IPC. He was shifted to Government Hospital, Shapurnagar, and from there, to Gandhi Hospital,

Secunderabad. The appellant was a driver by profession and was earning Rs.5,000/- per month besides batta of Rs.50/- per day. His left leg was amputated due to the injuries sustained by him in the accident. He has to purchase an artificial leg which may costs upto Rs.2,00,000/-. Since he has sustained permanent disability due to amputation of left leg and other injuries, he claimed compensation of Rs.6,00,000/-.

3. Heard learned counsel for the appellant Sri Kasireddy Jagathpal Reddy and learned counsel for the third respondent Ms.A.Jayanthi. None appeared on behalf of respondent Nos.1 and 2.

4. This is a claimant's appeal. The claimant sought for enhancement of compensation on the ground that the he has suffered permanent disability, as his left leg was amputated and he has suffered grievous injuries.

5. Learned counsel for the appellant mainly contended that the appellant was aged about 30 years by the date of accident, whereas the Tribunal has taken his age as 40 years. In this regard, it is appropriate to refer to para 15 of the award, which reads as follows:

> "15. Regarding the age of the petitioner, it is suggested on behalf of the third respondent to PW.1 that he is aged above 40 years, which is also denied by PW.1. But PW.1 admitted that he did not file his date of birth certificate. Even though it is the case of the petitioner that he is a driver, had he filed his

driving license, his death of birth would be known to the Court and thereby his age by the date of accident could have been calculated and since the age of the petitioner in Ex.A.6 accident register is appearing to be corrected as 30 years, the case of the third respondent that the petitioner was above 40 years by the date of accident can be accepted. Therefore, the age of the petitioner can be said to be above 40 years by the date of accident. For a person aged above 40 years, the multiplier as per the table given in the Second Schedule of Section 163-A of Motor Vehicles Act is '15'. Since the income of the petitioner is assessed at Rs.2,500/- p.m., his annual income would be Rs.30,000/-. If this amount of Rs.30,000/- is multiplied by '15', it comes to Rs.4,50,000/-. Since the petitioner is suffering 50% permanent and continuing disability his loss of earning capacity would be 50% of Rs.4,50,000/- which is equivalent to Rs.2,25,000/-, which would be just and reasonable to be awarded towards damages for loss of earning capacity on account of the said permanent disability caused to the petitioner."

6. The Tribunal has correctly assessed the age of the petitioner as above 40 years basing on the suggestion made to P.W.1 in his cross examination and in view of his admission in his evidence that he did not file his date of birth certificate, and also based on the corrections in Ex.A.6 accident register. In Ex.A.6 – accident register, there was correction in the age of the appellant as 30 years. Considering these evidences, the Tribunal has rightly came to the conclusion that the appellant was aged above 40 years by the date of accident.

Therefore, there are no grounds to interfere with the findings of the Tribunal in this regard.

7. Learned counsel for the appellant placed reliance on a decision of the Apex Court in **Nagappa v. Gurudayal Singh**[1] and contended that since the leg of the appellant was amputated, he has to go for artificial leg which costs around Rs.50,000/-, and therefore, sought for grant of that amount. Apart from the above, he also sought for grant of future loss of earnings at 50% placing reliance on a decision of the Apex Court in **Syed Sadiq v. United India Insurance Co. Ltd.**[2].

8. As far as amputation of leg of the appellant is concerned, he is required to get fixed an artificial leg. In the light of the decision in **Nagappa**'s case (1 supra), an amount of Rs.50,000/- can be awarded to the appellant for fixing artificial leg and therefore, the appellant is awarded Rs.50,000/-.

9. The learned counsel for the appellant submitted that the Tribunal has taken the income of the appellant as Rs.25,000/-, whereas in the light of the decision of the Apex Court in **Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Co. Ltd.**[3], an income of Rs.4,500/- per month to be taken in case of a driver.

[1] (2003) 2 SCC 274
[2] (2014) 2 SCC 735
[3] 2011 ACJ 2436

10. Learned counsel for the third respondent submits that the Tribunal has taken Rs.2,500/- per month as the income of the appellant, though the appellant did not file his driving licence to prove that he was working as a driver, and therefore, the Tribunal has rightly taken the income of the appellant as Rs.2,500/- per month.

11. As far as this aspect is concerned, an income of Rs.3,000/- per month can be taken into consideration in view of the decisions of the Hon'ble Supreme Court in ***Ramesh Singh v. Satbir Singh***[4], ***New India Assurance Company Ltd. v. Smt. Shanti Pathak***[5], ***Oriental Insurance Co. Ltd. v. Syed Ibrahim***[6], ***New India Assurance Co. Ltd., v. Kalpana (Smt)***[7], 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***[8] and a decision of High Court of Calcutta in ***United India Insurance Co. Ltd. v. Shri Buro Mahara***[9].

12. If the income of the appellant is taken as Rs.3,000/- per month, his annual income would be Rs.36,000/-. The relevant multiplier applicable to the age group of the appellant is '15'. If calculated, the compensation for

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[4] MANU/SC/7089/2008
[5] MANU/SC/7776/2007
[6] MANU/SC/7915/2007
[7] (2007) 3 SCC 538
[8] MANU/KA/3721/2013
[9] MANU/WB/0139/2015

permanent disability comes to Rs.2,70,000/- (Rs.36,000/- x 15 x 50/100). The Tribunal has awarded Rs.25,000/- towards pain and suffering, Rs.1,446/- towards medial bills and Rs.2,000/- towards extra-nourishment charges, attendant charges and transportation charges, which are found to be appropriate. The tabular form given below would show the enhancement particulars:

Sl.No.	**Name of Head**	**Awarded by Tribunal**	**Awarded by this Court**
01.	Permanent disability	Rs.2,25,000/-	Rs.2,70,000/-
02.	Pain and suffering	Rs.25,000/-	Rs.25,000/-
03.	Medical expenses	Rs.1,446/-	Rs.1,446/-
04.	Extra-nourishment charges, attendant charges and transportation charges	Rs.2,000/-	Rs.2,000/-
05.	Fixing of artificial leg	--	Rs.50,000/-
	TOTAL	**Rs.2,53,446/-**	**Rs.3,48,446/-**

13. As far as the other submissions with regard to enhancement of compensation under other heads are concerned, there is no necessity to enhance the same.

14. Accordingly, the appeal is allowed, in part, modifying the impugned order passed by the Tribunal, by enhancing the compensation from Rs.2,53,446/- to Rs.3,48,446/- with interest at 7.5% per annum from the date of petition till realization. The respondents are 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 to withdraw the entire amount.

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

GUDISEVA SHYAM PRASAD, J

Date: 10.03.2017.
TJMR