

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

M.A.C.M.A.No.883 of 2006

JUDGMENT:

This appeal is filed by the appellant-claimant under Section 173 of Motor Vehicles Act challenging the judgment and award, dated 02.01.2006 passed in O.P.No.2551 of 2003 on the file of the Motor Accidents Claims Tribunal-cum-XIII Additional Chief Judge (FTC), City Civil Court, Hyderabad.

2. The parties will be hereinafter referred to as they were arrayed before the trial Court to avoid confusion.

3. The facts leading to filing of the appeal, in brief, are as follows:

On 09.08.2003 the petitioner and his friend were proceeding to Hyderabad from Basara on Hero Honda (Splendor) bearing No.AP 09 AQ 4766. At about 1.00 p.m., when they reached the outskirts of Ramanthapur village of Medak district, the driver of the car bearing No.AP-10Q-963 had driven the same in a rash and negligent manner at high speed and dashed the petitioner's vehicle from opposite direction due to which the accident occurred. Against the driver of the car, the Station House Officer, Chegunta police station registered a case in Cr.No.95/2003 under Section 337 IPC. Due to the accident, the petitioner sustained injuries on various parts of the body and took treatment as in-patient in CDR Hospital, Hyderabad, for a period of 19 days. The petitioner underwent operation and his right leg big toe was removed. The petitioner spent an amount of Rs.80,000/- towards treatment and medicines. Due to injuries, the petitioner sustained permanent

partial disability. By the time of accident, the petitioner was earning Rs.3,800/- per month. Due to amputation of right leg big toe, the petitioner lost his earning capacity. The car bearing No.AP 10Q 963, which belongs to first respondent was insured with the second respondent company, therefore, respondents 1 and 2 are jointly and severally liable to pay compensation of Rs.2,00,000/- to the petitioner.

4. The first respondent filed counter denying all the averments made in the petition *inter alia* contending that the accident occurred due to the rash and negligent driving of the driver of the motor cycle and there was no negligence or rashness on the part of the driver of the car. The petitioner sustained simple injuries. The amount of compensation claimed by the petitioner is highly excessive and exorbitant. At the relevant point of time, the car was insured with the second respondent company; therefore, the second respondent alone has to pay the compensation, if any, to the petitioner.

5. The second respondent filed counter denying the averments made in the petition *inter alia* contending that this respondent is not aware of the criminal case registered against the driver of the car. The car bearing No.AP 10Q 963 was insured with this respondent at the relevant point of time. The amount of compensation claimed by the petitioner under various heads is highly excessive and exorbitant. Hence, the petition may be dismissed.

6. Basing on the above pleadings, the Tribunal framed the following issues:

1. Whether the accident in question took place on 09.08.2003 on account of the rash and negligent driving of the car bearing No.AP-10Q-963 by its driver?
2. Whether the petitioner is entitled for compensation? If so, to what amount and from whom?
3. To what relief?

7. During the course of enquiry, on behalf of the petitioner, PWs.1 and 2 were examined and Exs.A.1 to A.12 were marked. On behalf of the respondents, no oral evidence was adduced but Ex.B1 was marked.

8. Basing on the oral, documentary evidence and other material available on record, the Tribunal arrived at a conclusion that the accident occurred due to the rash and negligent driving of the driver of the car bearing No.AP 10Q 963, which resulted in the injuries to the petitioner and allowed the petition in part by awarding compensation of Rs.82,858/- in favour of the petitioner with interest at 6% per annum from the date of petition till the date of realisation.

9. Being not satisfied with the quantum of compensation awarded by the Tribunal, the claimant preferred the present appeal.

10. Learned counsel for the petitioner-appellant strenuously submitted that the Tribunal has not awarded any amount under the head of 'loss of future earnings' even though the petitioner's right leg big toe was amputated. He further submitted that the Tribunal failed to consider the earning capacity of the petitioner due to amputation of big toe. He further submitted that the Tribunal has not awarded just and reasonable compensation,

therefore, it is a fit case to interfere with the judgment and award passed by the Tribunal.

11. Per contra, learned counsel for the second respondent submitted that the Tribunal has awarded just and reasonable compensation, therefore, it is not a fit case to interfere with the judgment and award passed by the Tribunal.

12. Now the point that arises for consideration in this appeal is as follows:

“Whether the Tribunal has awarded just and reasonable compensation to the petitioner or not?”

13. As per the findings of the Tribunal, the accident occurred due to the rash and negligent driving of the driver of the car bearing No.AP-10Q-963, which resulted in the injuries to the petitioner. The findings recorded by the Tribunal became final in view of non-filing of appeal by the respondents. The Tribunal awarded compensation under the following heads:

Compensation towards:

1. Transportation	Rs. 1,000/-
2. Damage to clothes	Rs. 500/-
3. Pain and Sufferance	Rs. 5,000/-
4. Extra nourishment	Rs. 5,000/-
5. Medical expenses	Rs.53,758/-
6. Loss of earnings for two months	Rs. 7,600/-
7. Loss of toe and inconvenience	Rs.10,000/-

Total	Rs.82,858/-

14. Learned counsel for the petitioner is not disputing much about the quantum of compensation awarded by the Tribunal under other heads. The only contention of the learned counsel for

the petitioner is that the Tribunal has not considered the disability incurred by the petitioner. As seen from the testimony of P.W.2, the petitioner's right leg big toe was amputated. A perusal of the discharge card Ex.A8, it clearly indicates that the petitioner's right leg big toe was amputated. The Tribunal also arrived at a conclusion that the petitioner's right leg big toe was amputated. As per Ex.A11 disability certificate, the petitioner sustained 25% disability. It is not in dispute that Ex.A11 disability certificate was not issued by the competent medical board. It is not in dispute that P.W.2 did not treat the petitioner either in CDR hospital or in any other hospital. In such circumstances, much weight cannot be attached to the testimony of P.W.2. The Tribunal or Court shall not lose sight of certain aspects while deciding the petitions under Motor Vehicles Act. The fact remains that the petitioner's right leg big toe was amputated. As per schedule I part II annexed to the Workmen Compensation Act, the percentage of loss of earning capacity in case of amputation of big toe is '14%'. As seen from the testimony of P.W.1, by the time of accident, he was working as mechanic in coffee vending machine. Admittedly, the petitioner is eking out his livelihood by attending different works. It is a known fact that a person whose right leg big toe was amputated may not be in a position to walk like other persons. Undoubtedly, amputation of big toe will affect the earning capacity of the petitioner. Taking into consideration the facts and circumstances of the case and also the schedule annexed to the Act, this Court is of the considered view that the loss of future earning capacity of the petitioner is '14%'. As per the finding given by the Tribunal, the monthly income of the petitioner is Rs.3,800/-. The loss of

earning capacity of the petitioner comes to Rs.532/- (3,800 X 14/100) per month. By the time of accident, the petitioner was aged about 23 years. As per the principle enunciated in **SARLA VARMA v. DELHI TRANSPORT CORPORATION**¹ the appropriate multiplier for the age group of 21 to 25 years is '18'. The loss of dependency comes to Rs.1,14,912/- (532 X 12 X 18). Hence, the compensation awarded under various heads is as follows:

Compensation towards:

1. Transportation	Rs. 1,000/-
2. Damage to clothes	Rs. 500/-
3. Pain and Sufferance	Rs. 5,000/-
4. Extra nourishment	Rs. 5,000/-
5. Medical expenses	Rs.53,758/-
6. Loss of earnings for two months	Rs. 7,600/-
7. Loss of toe and inconvenience	Rs.10,000/-
8. Loss of dependency	Rs.1,14,912/-
Total	Rs.1,97,770/-

15. The petitioner is also entitled for interest at 6% per annum from the date of petition till the date of realisation on the enhanced amount of compensation. The car bearing No.AP-10Q-963, which belongs to the first respondent was insured with the second respondent company under Ex.B1 policy with effect from 09.03.2003 to 08.03.2004. As such, Ex.B1 policy was in force as on the date of accident, i.e. 09.08.2003. Hence, the second respondent has to indemnify the liability of first respondent in view of Ex.B1 policy. Therefore, respondents 1 and 2 are jointly and severally liable to pay the compensation to the petitioner.

¹ (2009) 6 SCC 121

16. In the result, the appeal is allowed in part by enhancing the compensation from Rs.82,858/- to Rs.1,97,770/- with interest at 6% per annum from the date of suit till the date of realisation. Respondents 1 and 2 are jointly and severally liable to pay the compensation with interest on the enhanced amount of compensation also. There shall be no order as to costs. Consequently, Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

T.SUNIL CHOWDARY, J

16th April 2018

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