

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A. No. 415 OF 2011

JUDGMENT:

This appeal is filed by the appellant/injured claimant under Section 173 of the Motor Vehicles Act, 1988 aggrieved by the award and decree dated 22.08.2005 passed in M.V.O.P.No.99 of 2003 by the Chairman, Motor Accidents Claims Tribunal-cum-VII Additional District Judge (FTC), Guntur, wherein the Tribunal granted compensation of Rs.75,750/- together with proportionate costs and interest @ 9% per annum from the date of petition till deposit for the injuries sustained by the appellant in the accident occurred on 18.12.2002 against the claim of Rs.1,50,000/-.

2. The appellant filed the claim petition alleging that on 18.12.2002 while he was going on the left side of the road near forest bungalow of Remidicherla village to attend the quarry work at Remidicherla, the driver of the offending vehicle i.e., jeep bearing No.AP7U 5826 drove it in a rash and negligent manner at high speed and dashed him and caused the accident, due to which he received severe injuries including fracture of right thigh bone and dislocation of right pubic bone. When the accident was reported in Bandlamodu P.S., a case in Crime No.80 of 2002 was registered and investigated into.

Immediately, the appellant was admitted in Government General Hospital, Guntur for treatment of his fracture injuries and he spent Rs.10,000/- towards medical expenses. He was doing coolie work in the quarry situated at Remidicherla village and he was earning Rs.100/- per day. Due to the injuries, he sustained permanent disability and he is not in a position to do any coolie work and lost his earnings. He suffered pain and mental agony due to the injuries received in the accident. Therefore, he claimed Rs.1,50,000/- on all counts for which he is entitled to.

The 1st respondent being the owner and the 2nd respondent being the insurer of the jeep, which involved in the accident, are jointly and severally liable to pay the compensation amount to the appellant.

3. The 1st respondent was set *ex parte* before the Tribunal.
4. The 2nd respondent filed written statement denying the averments of the claim petition and the 2nd respondent denied its liability to pay the compensation to the appellant.
5. Based on the pleadings, the Tribunal framed the following issues:
 - 1) Whether the accident occurred due to the rash and negligent driving of the driver of the jeep bearing No.AP7U/5826?
 - 2) Whether the petitioner is entitled for the compensation, if so, what amount and from which of the respondents?
 - 3) To what relief?

6. During the course of trial, on behalf of the claimant, he himself examined as PW1 and he also examined PW2, the doctor who treated him, and got marked Exs.A.1 to A.4 and Exs.X.1 to X.5. No evidence was adduced on behalf of the 2nd respondent.

7. The Tribunal, based on the evidence of PW1 and documentary evidence Exs.A.1 and A.2, had come to the conclusion that the accident occurred due to rash and negligent driving of the driver of the offending vehicle i.e., jeep bearing No.AP7U 5826 and answered the issue No.1 in favour of the appellant.

8. The Tribunal further held that based on the evidence of PW1 and PW2 – Dr. V.N.Krishna Prasad, Assistant Professor (Ortho), GGH, Guntur, who treated the petitioner, and the documentary evidence i.e., Ex.A.3 – Certified Copy of the Wound certificate, it is revealed that the appellant's right lower limb was shortened by 3 ½ inches and there is a restriction of movements of right hip 90 degrees flexion and 25 degrees of rotation is present. PW2 also stated that the appellant cannot walk without the help of the stick and he is limping and he cannot carry heavy weights and he is unable to do the labour works. PW2 further opined that the appellant suffered permanent disability to an extent of 32% and it can be the functional disability extends to the entire body, but the disability is only caused to the right lower limb

which cannot be extended to the entire body. But, the Tribunal based on the suggestion of the learned counsel for the 2nd respondent to PW2 that the percentage of disability would not exceed 25% as per the manual, was taken into consideration the disability at 25% for assessing the loss of future earnings on account of permanent disability.

9. The Tribunal had taken the annual income of the appellant as Rs.15,000/- as per the Second Schedule appended to Section 163-A of M.V. Act instead of taking earnings of Rs.100/- per day as a coolie in the quarry as per the evidence of PW1, which could be taken as fair and bonafide in the absence of contrary evidence.

10. The Tribunal had taken the age of the appellant as 25 years as per the evidence of PW1, who is an illiterate and in the charge sheet, his age is also shown as 25 years, but in Ex.A.3 – Certified Copy of Wound certificate, his age is shown as 20 years. The Tribunal had taken the multiplier of “17” as the age was taken as 25 years as per Second Schedule of Section 163-A of M.V. Act. The annual income taken by the Tribunal at Rs.15,000/- was multiplied by multiplier “17” and it comes to Rs.2,55,000/-. The percentage of disability was taken as 25% and loss of future earnings on account of permanent disability and loss of amenities was assessed at Rs.63,750/- (Rs.2,55,000/- X 25/100).

11. In addition to above, the Tribunal also granted Rs.5,000/- towards one grievous injury and Rs.2,000/- towards two simple injuries under the head of pain and suffering.

12. The appellant claimed Rs.10,000/- towards medical expenses, whereas in his evidence he deposed that he spent Rs.30,000/- towards medical expenses. However, the Tribunal held that no medical bills were produced before the Court and the entire treatment given to PW1 at GGH, Guntur is free of cost as per the evidence of PW2. However, the Tribunal held that the appellant was admitted in the hospital on 18.12.2002 and he was discharged on 17.02.2003 and thereby he was treated as inpatient for a period of two months. Therefore, The Tribunal granted Rs.5,000/- towards attendant charges, extra-nourishment and other miscellaneous charges. In all, the Tribunal granted total compensation of Rs.75,750/- with interest @ 9% per annum.

13. Being aggrieved by the same, the appellant preferred this appeal seeking enhancement of compensation.

14. The learned counsel for the appellant would contend that the Tribunal erred in awarding Rs.7,000/- only towards pain and suffering. The amount of Rs.7,000/- was awarded as per the Second Schedule only towards injuries and not under the head of pain and suffering. The Tribunal ought to have awarded Rs.15,000/- towards pain and suffering.

Further, the Tribunal ought to have taken permanent disability of the appellant as 32% as per the evidence of PW2 instead of 25%. The Tribunal erred in clubbing the loss of amenities of life into loss of earning while awarding the compensation. The Tribunal ought to have awarded the compensation under the head of loss of amenities in life. The Tribunal granted meagre amount of Rs.5,000/- towards attendant charges and extra-nourishment. Hence, he seeks to enhancement of compensation as claimed by him.

15. The learned counsel for the 2nd respondent would contend that the Tribunal granted just and fair compensation to the appellant for the injuries received in the accident and the appellant is not entitled for any enhancement of compensation over and above the amount granted by the Tribunal. He further argued that the appeal is misconceived and is liable to be dismissed.

16. In the facts and circumstances of the case and in considered view of this Court, the Tribunal ought to have taken the earnings of the appellant at Rs.100/- per day as a coolie in the quarry though in proof of the same, the appellant, being coolie, could not produce any documentary evidence. Therefore, the Tribunal could have taken the income of the appellant as Rs.3,000/- per month and could have arrived the annual income of the appellant at Rs.36,000/-. The Tribunal ought to have multiplied the

annual income of Rs.36,000/- with the multiplier “17” as the age of the appellant was taken as “25” years as per the evidence of PW1 and the document Ex.A.2 – charge sheet.

17. The Tribunal had not justified in taking the permanent disability of the appellant as 25% instead of 32% as deposed by PW2 – Dr. V.N.Krishna Prasad, Assistant Professor (Ortho), GGH, Guntur. The Tribunal could have arrived the loss of earnings of the appellant as Rs.1,95,840/- (Rs.36,000/- X 17 X 32/100) instead of Rs.63,750/- (Rs.15,000/- X 17 X 25/100).

18. The appellant claimed Rs.10,000/- towards medical expenses. But, the Tribunal did not grant any amount towards medical expenses for want of medical bills and further stating that the appellant was given free treatment at GGH, Guntur as per the evidence of PW2. However, a sum of Rs.5,000/- was granted towards attendant charges, extra-nourishment and other miscellaneous charges. As the appellant was an inpatient in the hospital for two months i.e., from 18.12.2002 to 17.02.2003, the Tribunal ought to have granted loss of earnings during the said two months @ Rs.3,000/- per month. Therefore, an amount of Rs.6,000/- is awarded to the appellant for loss of income for two months and an amount of Rs.6,000/- is granted towards attendant charges, extra-nourishment and other miscellaneous charges.

19. The Tribunal granted an amount of Rs.5,000/- towards one grievous injury and Rs.2,000/- towards two simple injuries, but the said amount of Rs.7,000/- was granted under the head of damages for pain and suffering. However, considering the long treatment and shortening of right lower limb by 3 ½ inches, the appellant is hereby awarded a conventional sum of Rs.15,000/- towards pain and suffering in addition to the amount of Rs.7,000/- granted towards one grievous injury and two simple injuries.

20. Therefore, this Court found that it is just and fair to grant total compensation of Rs.2,29,840/- (Rs.1,95,840/- + Rs.6000/- + Rs.6000/- + Rs.15,000/- + Rs.7,000/-).

21. Though the compensation claimed by the injured claimant before the Tribunal was only Rs.1,50,000/-, in view of the decision of the Hon'ble Supreme Court in **Nagappa vs. Gurudayal Singh and others**¹, there is no restriction in M.V. Act that the compensation should be awarded only upto the claim made by the claimant. Hence, the compensation awarded by the Tribunal is enhanced to Rs.2,29,840/-. However, the appellant/injured claimant shall pay the difference of Court Fee for the excess amount of Rs.79,840/-.

22. As the accident was taken place on 18.12.2002, the Tribunal has rightly granted interest at 9% per annum from the date of filing of the claim petition till the date of

¹ (2003) 2 SCC 274

realisation. However, on the enhanced amount of compensation, the appellant/claimant is entitled for interest at 7.5% per annum from the date of filing of the claim petition till the date of realisation.

23. The appeal is accordingly allowed. No order as to costs.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

JUSTICE M.GANGA RAO

14-08-2018
lkv/anr



THE HON'BLE SRI JUSTICE M.GANGA RAO



M.A.C.M.A. No. 415 OF 2011

14-08-2018

lkv/anr