

THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

M.A.C.M.A.NO.282 OF 2012

JUDGMENT:

This appeal arises out of the order and decree, dated 03.09.2011 in M.V.O.P.No. 852 of 2006 passed by the Motor Accidents' Claims Tribunal-cum-II Additional District Judge, Warangal.

2. The appellant is the claimant who filed Original Petition before the Tribunal under Section 166 of the Motor Vehicles Act claiming compensation of Rs.15,00,000/- against the owner of the crime vehicle and the insurer on the ground that the petitioner sustained grievous injuries in a motor vehicle accident.

3. The brief facts of the case are that on 22.07.2005, the appellant, who is a student, while proceeding on a motorcycle bearing No. AP36 L 9977, met with an accident when the lorry bearing No. AP24 V 2184 driven by its driver in a rash and negligent manner, with a high speed, dashed against his motorcycle from its behind, due to which, the petitioner fell down and received grievous injuries in the accident. The petitioner was admitted in Rohini Hospital, Hanamkonda for treatment. Due to the injuries, the

petitioner is unable to sit or squat. On his complaint, the police registered a case in Crime No.183 of 2005 for the offences punishable under Sections 338 and 337 IPC against the driver of the lorry for his rash and negligent act.

4. The 1st respondent is the owner of the lorry and the 2nd respondent is the New India Assurance Company Limited with which the motor vehicle was insured. The 1st respondent has remained *ex parte*. The 2nd respondent had filed written statement denying its liability and sought for dismissal of the claim petition on the ground that the driver of the crime vehicle has valid and effective driving licence on the date of the incident and that the accident occurred due to the gross negligence on the part of the rider of the motorcycle bearing No. AP36 L 9977 and alleged that there was contributory negligence on the part of the driver of the motorcycle. The Tribunal, on consideration of the evidence of PWs.1 and 2 and Exs.A1 to A15, Exs.X1 to X6 and Ex.B1 – Policy, has allowed the claim petition in part awarding compensation of Rs.5,27,514/- with proportionate costs and interest at 6% per annum thereon from the date of the petition till realization.

5. Being aggrieved by the judgment of the Tribunal, the claimant has filed the present appeal.

6. Heard the arguments of Sri A. Ajay Kumar, learned counsel for the appellant and perused the material on record. No arguments are advanced by the learned counsel for the respondents.

7. The learned counsel for the appellant submits that the quantum of compensation awarded by the Tribunal is inadequate and is not just compensation. The Tribunal has not considered correct income of the petitioner who was studying B.Com. at the time of the accident. After the accident, he suffered 90% disability and was unable to pursue his studies. He was not even able to sit or squat. The medical evidence clearly reveals that he suffered 90% permanent disability, but the Tribunal has awarded only Rs.10,55,027/- towards disability. It is further submitted that the Tribunal has held that there was contributory negligence on the part of the petitioner and deducted 50% out the compensation amount which is liable to set aside. It is mainly contended that there is no contributory negligence on the part of the petitioner herein, and therefore, the petitioner is entitled to the entire amount of compensation towards permanent disability.

8. To buttress his contention, the learned counsel for the petitioner, while placing reliance on the decision of the Supreme Court reported in Kumari Kiran and Ors. V.

Sajjan Singh & Ors.¹ submits that there is no contributory negligence on the part of the rider of the motorcycle and even if any contributory negligence is attributed, that negligence should be apportioned at the rate of 25% and 75% as held in this case. He also places reliance on the judgment of the Apex Court reported in the case of Meera Devi and Another v. Himachal Pradesh Road Transport Corporation and Others² and submits that imputation of contributory negligence is not sufficient and the same has to be established by cogent evidence. Thus, while placing reliance on the above two decisions, he has contended that there is no contributory negligence on the part of the petitioner and if any contributory negligence is attributed to the petitioner, the ratio to be apportioned as 25% and 75%. It is argued that the accident occurred while the petitioner was going on the motorcycle being hit by a lorry coming from his rear side. As the lorry dashed his motorcycle from rear side, apparently there was no negligence on the part of the rider of the motorcycle, therefore, contributory negligence cannot be attributed to the petitioner. It is further submitted that the respondents have not led any evidence to prove that there is contributory negligence on the part of the rider of the

¹ 2014 Law Suit(SC) 827

² (2014) 4 Supreme Court Cases 511

motorcycle, and therefore, the findings of the Tribunal holding that there is contributory negligence are liable to be set aside.

9. In the light of the evidence as recorded, there is no contributory negligence since the lorry dashed the motor cycle from its rear side.

10. The learned counsel for the petitioner has also placed reliance on the judgment of the Apex Court reported in Syed Sadiq v. United India Insurance Co. Ltd.³ and another judgment rendered by this Court in B.Ramulamma v. Venkatesh Bus Union, Lingarajapuram, Bangalore⁴ and submits that the petitioner, being a student of B.Com, there is every likelihood of his earning income of Rs.6,000/- to Rs.12,000/- per month, therefore, his notional income assessed by the Tribunal may be increased to Rs.12,000/- per month. It is further submitted that even in the case of the vegetable vendor in Syed Sadiq case (3rd supra), the Court held that notional income of Rs.6,000/- can be taken into consideration as his earnings per month. It is further submitted that in the judgment rendered by the Apex Court in Shivakumar M. v. BMTC⁵ it

³ (2014) 2 Supreme Court Cases 735

⁴ 2009 (6) ALD 684 (DB)

⁵ (2017) 5 Supreme Court Cases 79

is held that the income of the painter was taken into consideration as Rs.16,000/- per month. Therefore, it is argued that the notional income of the petitioner may be enhanced from Rs.3,000/- to an appropriate amount keeping in view the ratio laid down in the above decisions.

11. The learned counsel for the petitioner further submitted that the injured/claimant was a B.Com student, by the date of accident, and had he been continued his studies, he would have got a good job and get income more than Rs.3,000/-per month. However, this contention of the learned counsel for the petitioner is not disputed by the learned counsel for the Insurance Company. Therefore, having taken into consideration of the minimum income of the petitioner as Rs.5,000/- per month, the annual income of the deceased comes to Rs.60,000/-(Rs.5,000/- x 12). The petitioner was aged about 22 years by the date of accident, and, therefore, the multiplier as per the decision reported in *Smt. Sarla Verma and others v. Delhi Transport Corporation and another*⁶ is “18” is applicable in this case. Therefore, the total amount towards disability comes to Rs.9,72,000/- [Rs.60000/- x 18 x 90% disability]. Further, the amounts of Rs.1,60,000/- towards pain and suffering;

⁶ 2009 (6) SCC 121

Rs.2,86,827/- towards medical expenditure; and Rs.20,000/- towards nutritious food awarded by the Tribunal shall be in tact. Thus, the total amount of compensation comes to Rs.14.43,827/- [9,72,000/- + 1,60,000/- + 2,86,827/- + 25,000/-].

In the result, the appeal is partly allowed, by modifying the award passed by the Tribunal, enhancing the compensation to Rs.14,43,827/- with proportionate costs and interest at 7.5% per annum from the date of petition till realization. Respondents are directed to deposit the enhanced amount within two months from the date of receipt of a copy of this judgment and on such deposit the appellant/petitioner is entitled to withdraw the same without furnishing any security. Miscellaneous petitions, if any pending shall stand closed.

GUDI SEVA SHYAM PRASAD, J

Date: 09-04-2018
TSNR/BCJ