

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

MACMA No. 196 OF 2012

Judgment:

This appeal is preferred by the appellant – claimant challenging the order dated 10.11.2006 passed in OP No.807 of 2002 by the Chairman, Motor Accidents Claims Tribunal-cum-VIII Additional District Judge, Nizamabad, seeking enhancement of compensation.

2. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the Original Petition before the Tribunal.

3. The facts, in brief, are that, on 29.05.2002 at about 7.30 PM the petitioner was going on bicycle and when he reached near the crossing after Chinnapur village road on NH 16 road of Makloor Mandal, the driver of the lorry bearing registration No.AP 25T 898 drove the same in a rash and negligent manner at high speed and dashed the petitioner from behind and later the lorry turned turtle; the petitioner fell down and sustained fracture of both bones of left leg besides other grievous injuries; immediately, he was shifted to Deepa Orthopaedic Nursing Home, Nizamabad, where he was admitted as inpatient. Due to fracture of left leg, his left leg was amputated up to knee portion and sustained permanent disability; the petitioner was doing Hamali work and milk business and was earning in all Rs.10,000/- per month and due to disability he is unable to attend to his regular work. Hence, he claimed compensation of Rs.8,00,000/-.

4. The first respondent – owner of the vehicle and second respondent – Insurance Company remained *ex parte*. The third respondent –

Insurance Company filed written statement denying the claim of the petitioner.

5. The Tribunal, based on the above pleadings, framed three issues. During enquiry, the petitioner besides examining himself as PW.1 also examined Dr. L. Ramulu as PW.2 and Dr. Akhilesh as PW.3 and Exs.A1 to A5 were marked. On behalf of the respondents none were examined, but the copy of insurance policy was marked as Ex.B1.

6. The Tribunal, on issue No.1, by relying on Ex.A1 – copy of FIR and Ex.A2 – copy of charge sheet, held that the accident occurred due to rash and negligent driving of the lorry by its driver. On issue No.2, the Tribunal, taking the notional income of the petitioner at Rs.15,000/- per annum, deducted 1/3rd towards personal expenses and after applying the multiplier '15' and disability at 60% granted compensation of Rs.90,000/- (10,000/- x 15 x 60/100). Besides the same, the Tribunal also granted Rs.15,000/- for crush injury, Rs.5,000/- towards medical expenses and Rs.2,500/- for loss of earnings. Thus, in all, the Tribunal granted total compensation of Rs.1,12,500/- against the respondents 1 and 3. Since the petitioner impleaded the 2nd respondent by mistake and subsequently he got amended the petition and impleaded the 3rd respondent, the claim against the 2nd respondent was dismissed. Aggrieved by the compensation awarded by the Tribunal, the appellant filed the present appeal seeking enhancement of compensation.

7. The appeal was dismissed against the 1st respondent – owner of the vehicle for default, as per the orders of this Court, dated 05.09.2011, however, since the first respondent has suffered a decree by remaining *ex parte* before the Tribunal, the dismissal order passed against him by this

Court is of no consequence in view of the decision of the Division Bench of this Court in Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma¹.

8. Heard learned counsel for the appellant and learned counsel for the 3rd respondent – Insurance Company.

9. Learned counsel for the appellant contends that the appellant was earning Rs.10,000/- per month by doing Hamali work and selling milk and the Tribunal erred in fixing his annual income at Rs.15,000/-. He further contends that the appellant had received crush injury to his left leg and his left leg was amputated up to knee point and as he sustained permanent disability he is unable to stand, walk and attend to his regular work and the Tribunal erred in not granting the entire compensation amount claimed by the appellant.

10. On the other hand, learned counsel for the 3rd respondent – Insurance Company contended that the Tribunal, on consideration of the entire oral and documentary evidence, awarded just and reasonable compensation and there is no reason to enhance the same.

11. The contention of the petitioner is that he was aged about 42 years and was earning Rs.10,000/- per month by doing Hamali work and selling milk, but he did not file any documentary evidence and did not examine any independent witness to prove the same. The Tribunal has taken the notional income of the petitioner at Rs.15,000/- per annum. However, even assuming that the petitioner was doing some labour work, his income may be fixed at Rs.50/- per day which comes to Rs.18,000/-

¹ 2001(1) ALD 453 (DB)

per annum. The Tribunal has wrongly deducted 1/3rd towards personal expenses and the same cannot be deducted. Coming to the disability sustained by the petitioner due to amputation of his left leg up to knee point, the Tribunal, for the reasons recorded in the impugned order, disbelieved the evidence of Dr. L. Ramulu and Dr. Akhilesh, Medical Officers, who were examined as PWs.2 and 3, and Exs.A3 and A5 - the wound certificate and disability certificate, but, however, based on Schedule-I of Workmen's Compensation Act, the percentage of disability sustained by the petitioner was taken at 60% and the same is accepted. The Tribunal applied the multiplier '15', but, as per the decision of *Sarla Verma v. Delhi Transport Corporation*², for the age of the petitioner the appropriate multiplier to be applied is '14'. Accordingly, the loss of earnings on account of permanent disability is estimated at Rs.1,51,200/- (18,000/- x 60/100 x 14). The Tribunal granted Rs.15,000/- towards crush injury and the same is enhanced to Rs.25,000/-. The Tribunal granted Rs.5,000/- towards medical expenses on the ground that the petitioner could not produce any medical bills. Admittedly, the petitioner sustained crush injury and immediately after the accident he was shifted to a private nursing home where he was treated as inpatient for 20 days and underwent operations. According to the petitioner, he incurred Rs.1,00,000/- towards medical expenses and he was still undergoing treatment from private doctors. In the circumstances, an amount of Rs.25,000/- is granted towards medical expenses, extra nourishment, attendant and transport charges. In addition to that, since the petitioner might have taken at least two months time for becoming normal, Rs.3,000/- is granted towards loss of earnings during the period of

² (2009) 6 SCC 121

treatment. In *Subulaxmi v. Managing Director, Tamilnadu State Transport Corporation*³, the Hon'ble Supreme Court, by observing that if the victim of the accident suffers permanent disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident, granted an amount of Rs.1,50,000/- towards loss of amenities. Hence, following the said judgment, and taking into consideration the facts and circumstances of the present case and the age of the petitioner herein, an amount of Rs.1,00,000/- is awarded towards loss of amenities. Thus, in all, an amount of Rs.3,04,200/- (Rs.1,51,200/- + Rs.25,000/- + 25,000/- + 3,000/- + 1,00,000/-) is awarded towards compensation to the petitioner.

12. The MACMA is, accordingly, allowed in part enhancing the compensation from Rs.1,12,500/- to Rs.3,04,200/- with interest at 7.5% p.a., from the date of petition till realization. There shall be no order as to costs.

13. As a sequel thereto, the miscellaneous petitions, if any, pending in this MACMA shall stand closed.

KONGARA VIJAYA LAKSHMI, J

Date: 12th October 2018
Nsr

³ 2012(10) SCC 177

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