

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.No.432 OF 2011

JUDGMENT:

Appellant-claimant filed this appeal against the award and decree dated 02.11.2010 passed in M.O.P.No.374 of 2007 by the Chairman, Motor Accidents Claims Tribunal (District Judge), Vizianagaram, granting compensation of Rs.2,06,000/- along with interest @ 6% per annum as against the claim of Rs.4,00,000/- for the injuries sustained by him in the motor accident that took place on 08.07.2006.

The appellant filed claim petition under Section 166 of the Motor Vehicles Act read with Rule 455 of M.V. Rules alleging that on 08.07.2006 when he was proceeding on his motor cycle and reached near Gokul Engineering Institute at about 3.30 p.m. one RTC bus bearing No.AP10 Z 1949 came in opposite direction driven by its driver in a rash and negligent manner at high speed and even without blowing any horn or following the traffic rules, dashed against the motor cycle of the appellant, due to which, the appellant fell down and sustained multiple fractures on right leg, other injuries all over the body and the motor cycle was also badly damaged. Immediately, he was taken to Government Hospital, Bobbili, from there he was shifted to Apex Hospital, Visakhapatnam, where he got operated. The Station House Officer, Bibbili PS, registered a case in crime No.112 of 2006 for the offence punishable under Sections 337 and 338 IPC against the driver of the RTC bus. The appellant claims that he was aged about 40 years at the time of accident and was working as a Welder and

earn Rs.200/- per day. He underwent several operations for his injuries and he has to undergo still more operations. His right leg was permanently disabled. He was the only earning member and bread winner of his entire family. Hence, he claimed compensation of Rs.4 lakhs along with interest and costs from the respondents.

First respondent, driver of the offending bus, was examined as R.W.1.

Respondents 2 and 3 filed a counter denying the averments of the claim petition and further stating that the accident was occurred due to the rash and negligent driving of the appellant, the compensation claimed is highly exaggerated and they are not liable to pay any compensation.

Based on the above pleadings, the Tribunal framed the following issues for its consideration:

- (1) Whether the accident was occurred resulting injuries caused to the petitioner, due to rash and negligent driving of the APSRTC Bus bearing No.AP 10 Z 1949 by its driver R-1?
- (2) Whether the petitioner is entitled for compensation? If so, what is the quantum of amount he is entitled?
- (3) To what relief?

On behalf of the appellant, PWs 1 and 2 were examined and Exs.A.1 to A.13 were got marked. On behalf of RTC, RW-1 was examined and no documents were marked.

The Tribunal based on the evidence of PW.1 and Exs.A.1 to A.4 held that the accident occurred due to the rash and negligent driving of the offending vehicle and thereby answered issue No.1 in favour of the appellant.

The Tribunal has taken the income of the deceased as Rs.3,000/- per month disbelieving the evidence of P.W.1 that he used to work as Welder and earn Rs.200/- per day, on the ground that no supporting and independent evidence was adduced in support of the said claim. The Tribunal has arrived the annual income of the deceased at Rs.36,000/- and applied the multiplier of '15' as per Schedule-II to Section 163-A of the MV Act, as the appellant was aged 40 years. The Tribunal relying on Ex.A.13 Disability Certificate coupled with the evidence of P.W.2-Doctor held that the appellant has suffered 30% disability as a result of the accident. Hence, the Tribunal worked out the compensation for disability of the appellant to Rs.1,62,000/- (Rs.36000 X 30% X 15). In addition to the same, the Tribunal has granted Rs.39,000/- towards medical expenses as against the claim of Rs.1,39,928-40 p.s. on the ground that most of the bills were not proved by examining the competent persons who issued the same and also with reference to the bill books. Further, the Tribunal has granted Rs.5,000/- towards transport expenses as against the claim of Rs.26,000/-, as per Ex.A.10, due to lack of corroborative evidence. Thus, in all, the Tribunal has granted Rs.2,06,000/- towards compensation along with interest @ 6% per annum from the date of petition till the date of realization, payable by respondents jointly and severally within a period of one month therefrom.

Sri Jayanti S.C.Sekhar, learned counsel for the appellant, would contend that the Tribunal has granted very meagre compensation; Tribunal failed to take into consideration the

injuries sustained by the appellant and medical evidence adduced before the Tribunal; the appellant sustained three fractures i.e. right femur, hip and knee and after prolonged treatment he was discharged from hospital; he suffered 30% permanent disability and lost earning capacity; due to the injuries sustained by him he could not able to attend his duties as Welder; the Tribunal grossly erred in not granting Rs.1,39,928-40 ps towards medical expenses as per Ex.A.5 disbelieving the same and granted only Rs.39,000/- contrary to the evidence on record; the Tribunal granted only Rs.5,000/- towards transport expenses against the claim of Rs.26,000/- as per Ex.A.10; and the Tribunal grossly erred in disbelieving the earnings of the appellant as a Welder @ Rs.200/- per day. Accordingly, he seeks enhancement of the compensation.

Per contra, Sri S.V.Ramana, learned Standing Counsel appearing for respondents 2 and 3, would contend that the Tribunal after considering the entire evidence before it rightly granted compensation of Rs.2,06,000/- along with interest @ 6% per annum which cannot be said to be unjust compensation, as the appellant failed to prove his income by adducing evidence. The appeal is misconceived and liable to be dismissed.

In the facts and circumstances of the case, having heard the learned counsel for the parties and perused the record, this Court finds that the Tribunal grossly erred in taking the income of the deceased as Rs.3,000/- per month ignoring the claim of the appellant that he used to earn Rs.200/- per day by working as a Welder at the time of the accident, on the ground that he has not produced any evidence in support of his claim. Earning Rs.200/-

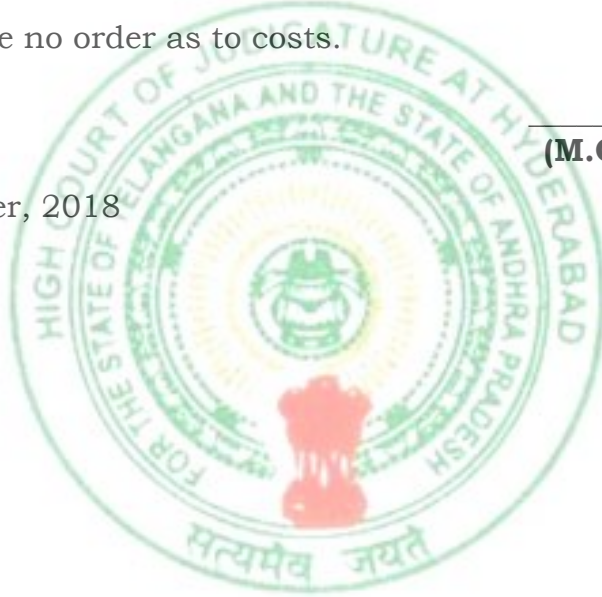
per day in the year 2006 by a skilled worker is fair and reasonable and cannot be said to be exaggerated or on higher side. In ***Sri Ramachandrappa vs. Manager, Royal Sundaram Alliance Insurance Company Limited***¹, the Hon'ble Supreme Court held that the person aged about 35 years, working as a coolie, could easily earn Rs.4,500/- per month. In the case on hand, the claimant was aged about 40 years and working as Welder at the time of accident. Hence, it is just and proper to take the earnings of the appellant as Rs.4500/- per month and Rs.54,000/- per annum. Relying on Ex.A.13-Disability Certificate coupled with the evidence of P.W.2-Doctor, the Tribunal held that the appellant suffered 30% disability and the said finding of the Tribunal is in accordance with the evidence on record and need not be interfered with. Further, as per Schedule-II to Section 163-A of the M.V.Act, the Tribunal has rightly taken the multiplier of 15 as the appellant was aged 40 years at the time of accident. Hence, the loss of earnings of the appellant works out to Rs.2,43,000/- (Rs.54000 X 30% X 15). In addition, the appellant is entitled for Rs.39,000/- towards medical expenses as held by the Tribunal. Further, the appellant is also entitled for an amount of Rs.26,000/- towards transportation charges as per Ex.A.10, as he underwent operation and took prolonged treatment. Thus, in total, the appellant is entitled for Rs.3,08,000/- along with costs and interest @ 7.5% per annum, which was the prevailing bank rate of interest at the relevant point of time, from the date of petition till the date of realization.

¹ 2011 (6) ALT 48 (SC)

Accordingly, the appeal is allowed in part enhancing the compensation granted by the Tribunal of Rs.2,06,000/- to Rs.3,08,000/- payable by the respondents jointly and severally. The respondents shall deposit the entire compensation amount before the Tribunal to the credit of the O.P. along with costs and interest, after deducting the amounts if any already deposited, within a period of one month from the date of receipt of a copy of this order. On such deposit, the appellant is at liberty to withdraw the entire amount.

Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

23rd November, 2018
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(M.GANGA RAO, J)