HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

<u>MACMA.No.904 OF 2006</u>

<u>JUDGMENT</u>:

1. This appeal is preferred by the petitioner in O.P.No.1285 of 2002 on the file of the Motor Accidents Claims Tribunal-cum-VII Additional District Judge, Guntur (*for short, 'the Tribunal'*), dissatisfied with the award dated 15.02.2006 granting a sum of Rs.44,000/- towards compensation as against Rs.1,50,000/- claimed by the petitioner under Section 166 and 163A of the Motor Vehicles Act, 1988 (for short, 'the Act').

2. The appellant herein is the petitioner before the Tribunal, while the respondent Nos.1 and 2, are the owner and insurer of the Lorry bearing No.AP 30T 7578 (*for short 'offending vehicle)*, respectively.

3. The factual background of the case is that on 17.10.2002 the petitioner was returning from Vijayawada to Takkellapadu Village, on his bicycle and when he reached near Chinakakani junction at about 3.00 p.m. a lorry bearing No.AP 30T 7578 which was coming from Vijayawada side at high speed dashed the cycle from its behind, as a result of which, the petitioner fell down on the road and the lorry tyre ran over on the right foot of the petitioner, due to which his right leg was crushed. Immediately, he was admitted in Government Hospital, Mangalagiri and a case in Crime No.149/02, under Section 338 of IPC was also registered against the driver of that lorry in Mangalagiri Rural Police Station. The petitioner was sifted from

Government Hospital, Mangalagiri to Government General Hospital, Guntur. He suffered pain and mental agony. He is unable to work as a painter due to the permanent disability caused to his right leg. Therefore, he filed OP claiming compensation of Rs.1,50,000/- towards compensation under various heads.

4. The 1st respondent remained exparte before the Tribunal and the 2nd respondent filed counter denying the allegations made by the petitioner and also contending that the accident occurred only due to rash and negligent driving of the petitioner himself. He further states that the driver of the lorry was not having valid and effective driving licence to drive the vehicle and the lorry was not insured with this respondent, as such, this respondent is not liable to pay compensation to the petitioner.

5. The Tribunal framed three issues to fix the responsibility and examined PWs.1 and 2 and marked Exs.A1 to A5 and Ex.X1. No evidence is adduced on behalf of the respondents.

6. The Tribunal, on appraisal of evidence on record, and relying on the oral evidence of PW1 and documentary evidence Exs.A1 and A2 came to the conclusion that due to rash and negligent driving of the Lorry belonging to the 1st respondent, the accident occurred and tendered the finding on Issue No.1 in favour of the petitioner.

7. On issue No.2, the Tribunal has taken the notional annual income of the petitioner at Rs.15,000/- as per the second schedule of the Act, by deducting 1/3rd amount towards personal expenses, arrived at a sum of Rs.10,000/- to calculate the loss of future income of the petitioner. Basing on Exs.X1, A3 and A4, the Tribunal has taken the age of the petitioner as 30 years and adopted the multiplier '17' as per second schedule of Act and by taking the functional disability of the petitioner at 20% arrived at a sum of Rs.34,000/- towards loss of income. The Tribunal also awarded Rs.5,000/- towards medical expenses and other miscellaneous charges and awarded a total mount of Rs.44,000/- payable by respondents 1 and 2 jointly and severally with proportionate costs and interest @ 7.5% per annum from the date of petition till the date of realization.

8. Dissatisfied with the award of compensation granted by the Tribunal, the petitioner preferred the instant appeal impugning the award seeking for enhancement of compensation with interest there on.

9. Heard learned counsel for the appellant and Sri P.Harinath Gupta, learned counsel for the 2nd respondent.

10. Learned counsel for the appellant submits that though the petitioner was working as painter and earning Rs.100/- per day, the Tribunal has taken the annual income of the petitioner at Rs.15,000/- stating that there is no evidence to prove the income of the petitioner and also deducted 1/3 towards

personal expenses which is not permissible in injuries case. As such, pleaded to enhance the compensation by taking the income of the petitioner at Rs.3,000/- per month. He also submits that meagre amount is granted towards pain and suffering though petitioner was operated five times and skin grafting was done and his right little toe was amputated. He also submits that when the doctor who treated the petitioner has given disability certificate, the Tribunal would have taken the same into consideration.

11. On the other hand learned Standing counsel appearing for 2nd respondent-Insurance Company submits that since there is no income proof showing the petitioner is earning Rs.3,000/- per month, the Tribunal has rightly taken the income of the petitioner at Rs.15,000/- per annum by relying on the second schedule of the Act, as such, no interference is called for.

12. The Supreme Court in ***Syed Sadiq and others v. Divisional Manager, United India Insurance Company Limited*** [1]at para 8, held as follows;

> "….It is difficult for us to convince ourselves as to how a labour involved in an unorganized sector doing his own business is expected to produce documents to prove his monthly income. In this regard, this Court, in *Ramachandrappa v. Royal Sundaram Alliance Insurance Co.Ltd. reported in (2011) 13 SCC 236, has held as under: (SCC pp.242-43, paras 13-15)*
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> > *"13. In the instant case, it is not in dispute that the appellant was aged 35 years and was working as a*

[1] (2014) 2 Supreme Court Cases 735

coolie and was earning Rs.4,500/-per month at the time of the accident. This claim is reduced by the Tribunal to a sum of Rs.3,000/- only on the assumption that the wages of a labourer during the relevant period viz. in the year 2004, was Rs.100 per day. This assumption in our view has no basis. Before the Tribunal, though the Insurance Company was served, it did not choose to appear before the Court nor did it repudiate the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning to be a sum of Rs.3,000/- per month. Secondly, the appellant was working as a coolie and therefore, we cannot expect him produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant.

14. We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guesswork. Which may include the ground realities prevailing at the relevant point of time.

15. In the present case, appellant was working as a coolie and in an around the date of the accident, the wage of a labourer was between Rs.100 to Rs.150 per day or Rs.4,500 per month. In our view, the claim was honest and bonafide and, therefore, there *was no reason for the Tribunal to have reduced the monthly earning of the appellant from Rs.4,500 to Rs.3,000 per month. We therefore, accept his statement that his monthly earning was Rs.4,500.*

9. There is no reason in the instant case for the Tribunal and the High Court to ask for evidence of monthly income of the appellant claimant. On the other hand, going by the present state of economy and the rising prices in agricultural products, we are inclined to believe that a vegetable vendor is reasonably capable of earning Rs.6,500/- per month."

The Supreme Court while dealing with the case of a coolie and also vegetable vendor made the above observations.

13. In the present case it is claimed that the petitioner is a painter and earning Rs.100/- per day i.e. Rs.3,000/- per month. In view of the aforesaid Judgment, the income of the petitioner can be taken as Rs.3,000/- per month.

14. By relying on the evidence of PW2-doctor who treated the petitioner, the Tribunal has rightly taken the disability of the petitioner at 20% and admittedly as the appellant is aged 30 years the multiplier '17' can be adopted, as the same is not disputed by either counsel herein.

15. In view of the same the loss of future income of the appellant comes to Rs.1,22,400/- (3,000 x 12 x 17 x 20/100) which is rounded of to Rs.1,22,500/-.

16. As per the evidence of PW2, The petitioner was operated five times i.e. on 19.10.2002, 25.10.2002, 1.11.2002,

15.11.2002 and 22.11.2002; and skin grafting was done on 19.12.2002 and his right little toe was amputated, which goes to show that the petitioner might have undergone severe pain. As such, this Court feels that granting of Rs.5,000/- by the Tribunal is on lower side. Hence the same can be enhanced to Rs.15,000/-.

17. As far as medical expenses are concerned, since no evidence is produced by the appellant, the Tribunal granted Rs.5,000/- towards medical expenses. But, no amount was granted towards extra nourishment, conveyance and attendant charges. Since petitioner was stayed in the hospital for 70 days an amount of Rs.7,500/- can be granted towards extra nourishment, conveyance and attendant charges.

18. Thus, the petitioner is entitled to a total amount of Rs.1,50,000/- (1,22,500 + 15,000 + 5,000 + 7,500) towards compensation.

19. Accordingly, the MACMA is allowed granting compensation of Rs.1,50,000/- as against Rs.44,000/-, awarded by the Tribunal and the same is accordingly granted. The petitioner is entitled to interest on the enhanced compensation of Rs.1,06,000/- at 7.5% per annum from the date of petition till realization, as per the decision of the Apex Court in **Rajesh and others v. Rajbir Singh and others [2].**

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[2] 2013 ACJ 1403 = 2013 (4) ALT 35

20. Accordingly, the instant appeal is allowed modifying the order passed by the Tribunal, by enhancing the compensation, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

As a sequel, miscellaneous applications, if any, pending in the appeal, shall stand closed.

A.RAJASHEKER REDDY, J

16.03.2018
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