

THE HONORABLE SRI JUSTICE M. SATYANARAYANA MURTHY

MA CMA No.509 of 2018

ORDER

This appeal under Section 173 of Motor Vehicles Act, is filed by the injured claimant challenging the award and decree dated 09.01.2018 passed in O.P.No.359 of 2016 by the Chairman, Motor Accidents Claims Tribunal-cum-VIII Additional District Judge, Anantapuramu, awarding compensation of Rs.42,000/- together with interest at 7.5% per annum from the date of petition till the date of realisation making respondents 1 to 3 jointly and severally liable to pay compensation.

2. The appellant is injured claimant in O.P.No.359 of 2016. It is alleged that on 30.06.2016 during early hours, the claimant left the house and went to Anantapuramu town by driving the auto and during noon time, he proceeded to his house to have lunch by parking his auto in front of Bharathi B.Ed., College, Kalyandurg Town, Anantapuramu and that while he was crossing the road towards Gokul Tea Cafe side to go to his house, a car bearing No.KA-34-B-3149 belonging to the first respondent, driven by its driver-third respondent in a rash and negligent manner at high speed, dashed against the claimant, as a result, he fell down on the road and sustained multiple injuries. On noticing the accident, the inmates of the house shifted the claimant immediately to the Government General Hospital, Anantapuramu and that as the condition of the injured was serious, he was shifted to Government General Hospital, Kurnool, where he was admitted on 01.07.2016

and discharged on 12.07.2016. He underwent surgery and plates and screws were inserted inside the bone and thus, he sustained grievous injuries on vital parts of body and because of the injuries, the petitioner became permanently disabled and unable to attend his regular duties and he lost his capacity to drive the auto. The claimant was an auto driver and earning more than Rs.500/-per day, which was contributing to his entire family and therefore, he claimed an amount of Rs.5 lakhs under various heads of compensation for the injuries sustained by him in the accident. The first respondent is owner, the second respondent is insurer and the third respondent is driver of the crime vehicle and hence, they are jointly and severally liable to pay compensation to the claimant.

3. The first and third respondents remained *ex parte*. The second respondent insurer filed counter *inter alia* contending that the claimant received injuries about three years back prior to the alleged accident, but not in the accident as alleged in the petition. As the claimant was contributing negligence for causing the accident, the driver of car alone cannot be made liable to pay compensation. But in order to avoid criminal liability and to claim compensation, a report was lodged against the driver of the car and therefore, the claimant has to establish that the accident occurred only due to negligence of the driver of the car, but not due to his negligence and that the claimant did not sustain any injuries which created permanent disability and that the claim is excessive and is liable to be dismissed while admitting the subsistence of valid policy disputing the

competency of the driver of the vehicle at the time of accident and prayed for dismissal of the petition.

4. In the said OP, based on the above pleadings, the Tribunal framed the following issues:

- i. Whether the driver of the crime Toyota Etios car bearing No.KA 34-B-3149 driven the same in rash and negligent manner caused the accident resulting which the petitioner Golla Venkata Rangaiah @ Rangaiah had sustained permanent disability due to the grievous injuries?
- ii. Whether the petitioner is entitled for compensation as prayed for in the petition?
- iii. To what relief?

5. During enquiry, P.Ws.1 to 3 were examined and Exs.A1 to A4 and Ex.X1 were marked on behalf of the claimant. No evidence was adduced on behalf of the respondents, but Ex.B1-insurance policy copy was marked.

6. Dissatisfied with the award passed by the Tribunal, the present appeal is preferred on the ground that the Tribunal did not assess the compensation taking into consideration the nature of injuries, which permanently reduced the earning capacity of petitioner being the driver of auto. The Tribunal failed to take into consideration Exs.A1 to A4 and Ex.X1 in arriving at such conclusion and awarded low compensation and prayed to set aside the award under challenge.

7. At the stage of admission, the counsel for appellant reiterated the grounds urged in the appeal while contending that the appellant being driver of auto at the time of accident has become permanently

disabled and his earning capacity was sharply reduced and thereby, the compensation awarded by the Tribunal is erroneous and prayed to award compensation of Rs.5 lakhs as claimed in the petition.

8. Considering the contentions of appellant, at the stage of admission, the point that arises for consideration is:

“whether the appellant/claimant has suffered any permanent disability as defined under Section 142 of Motor Vehicles Act, reducing his earning capacity and if so, the compensation awarded by the Tribunal is low and the claimant is entitled to claim compensation of Rs.5 lakhs together with interest?”

9. **Point:**

The finding of the Tribunal that the accident occurred due to rash and negligent driving of the third respondent is not challenged by the respondents and therefore, this Court need not disturb the finding recorded by the Tribunal with regard to rashness and negligence attributed to the third respondent.

10. The only ground raised before this Court is that on account of injuries, the claimant's earning capacity as driver of the auto was reduced to minimum extent or not, is a question to be decided.

11. In view of the limited scope, the evidence of P.Ws.1 to 3 is relevant to decide the permanent partial disability of the claimant. P.W.1, who was the driver of auto, testified about the manner of accident and the injuries sustained by him. P.W.2 is the doctor, who initially treated P.W.1. According to the evidence of P.W.2, Medical Officer, he gave first aid to P.W.1 and issued wound certificate

opining that the injury on the right knee is grievous in nature. Ex.A2 is the wound certificate dated 18.07.2016 and the other injuries are simple in nature. But he referred the claimant to Government General Hospital, Kurnool. P.W.3, doctor, who treated P.W.1 in Government General Hospital, Kurnool, found commuted fracture right patella on the body of petitioner and on thorough investigation, he treated conservatively with POP cast and discharged the claimant on 12.07.2016.

12. As per Ex.X1, case sheet, P.W.1 was aged about 50 years and was found old fracture to the right tibia bone, which was united and no surgery was conducted to the said injury, thereby no disability certificate was issued to P.W.1. Even as per Ex.X-1 case sheet, the claimant has to take rest for two months. Thus, the injury sustained by the claimant was only fracture to right knee, which is grievous in nature, and the other injuries are simple in nature. The petitioner was treated conservatively and no plates and screws were fixed as contended by the claimant and that when he was treated conservatively without any surgery and whether such injury is created any permanent disability, is to be decided.

13. The word 'permanent disability' is defined under Section 142 of the Motor Vehicles Act, as follows:

Permanent disablement.—For the purpose of this Chapter, permanent disablement of a person shall be deemed to have resulted from an accident of the nature referred to in sub-section (1) of section 140 if such person has suffered by reason of the accident, any injury or injuries involving:—

(a) permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint; or

(b) destruction or permanent impairing of the powers of any member or joint; or

(c) permanent disfiguration of the head or face.

14. In the present case, the petitioner sustained only one grievous injury and other injuries are simple in nature. The grievous injury i.e., fracture of right knee was treated conservatively by applying POP and earlier fracture of right tibia bone was united and no surgery was conducted. Therefore, the injury sustained in the present accident is only one grievous injury of fracture of right patella, which was united and the doctor did not certify the permanent disablement. At best, the claimant is entitled to claim compensation towards pain and suffering and loss of income for two months @ Rs.10,000/- per month, as contended by the claimant, and in the absence of any permanent disablement either partial or total, which did not reduce the earning capacity of the claimant. Therefore, the Tribunal has rightly declined to grant any compensation under the head of loss of future earning capacity on account of permanent disability as contended by the petitioner since it was not substantiated by examining a competent doctor certifying that he had suffered permanent partial disablement, which reduces his earning capacity i.e., functional disability. In the absence of such evidence, rejection of claim under the head of loss of future earning capacity cannot be faulted.

15. The Tribunal awarded compensation of Rs.42,000/- under various heads i.e., Rs.20,000/- towards loss of earnings for two months @ Rs.10,000/-per month, Rs.6,000/- towards three lacerated

injuries @ Rs.2,000/-per each injury and Rs.10,000/-towards travelling and other incidental expenses and thus, in total, awarded compensation of Rs.42,000/-, which does not call for interference by this Court. Therefore, I find no ground to set aside the award passed by the Tribunal since the claimant did not suffer any permanent disability as defined under Section 142 of Motor Vehicle Act. Therefore, the appeal is devoid of merit and deserves to be dismissed.

16. In the result, the appeal is dismissed. No order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand dismissed.

M. SATYANARAYANA MURTHY, J

6th March, 2018

sj

