HON'BLE SRI JUSTICE T. AMARNATH GOUD

MA.CMA.NO: 1 5 7 OF 2014

J U D G M E N T :

This appeal arising out of the award and decree dated 11-06-2008 passed in MVOP.No. 595 of 2005 by the Motor Accident Claims Tribunal-cum-Principal District Court, Kadapa, [for short " *The Tribunal* ").

2. The appellant is the respondent No.2-New India Assurance Company Limited, who filed the present appeal, questioning the quantum of compensation granted by the Tribunal for one grievous injury, which is excessive. The appellant-Insurance Company raised various grounds in the appeal; namely, determining Rs.15,000/- as the annual income of the injured-claimant, fixing the disability at 40% as per Ex.A4 for the loss of little finger of left hand, which is contrary to schedule-I of Workmen's Compensation Act. The appellant-Insurance company also contended that as per Schedule-I of Workmen's Compensation Act, for loss of two fingers the percentage of loss of earnings is 20% and in this case, the loss of earnings for the loss of little finger of left hand would be 10% and also granting an amount of Rs.22,000/- towards pain and suffering is contrary to second schedule.

3. Heard the learned standing counsel for the appellant-New India Assurance Company Limited and the learned counsel for the

first respondent. The appeal against Respondent No.2 is dismissed for default, vide orders dated 20-9-2011.

4. The brief facts of the case are that the first respondent herein, who is the claimant before the Tribunal filed a claim-petition under section 166 of the Motor Vehicles Act, claiming compensation of Rs.3,00,000/- for the injuries sustained by him in a motor vehicle accident that took place on 31-05-2005 at 07:30 p.m. besides Kodanda Ramalayam at Vontimitta on Kadapa-Rajampet main road, owing to the rash and negligent driving of the driver of lorry bearing No. RJ-02-G-7274 belonging to the first respondent and insured with the second respondent.

3. Before the Tribunal, the first respondent remained ex-parte. The second respondent filed a counter denying the averments of the claim-petition. The accident was due to the negligent riding of the cycle by the petitioner-claimant himself. It is averred that the petitioner-claimant was in deep conversation with the pillion rider of cycle and did not care the on-going traffic and fell under the offending lorry with his cycle. The second respondent contended that the respondents are not liable to answer the claim of the petitioner-claimant.

4. On the basis of the pleadings, the Tribunal framed the following issues for trial:

> i) *Whether the accident did not occur due to rash and negligent driving of the lorry bearing No. RJ-02/G-7274 belonging to the first respondent which is insured with respondent No.2, by its driver?*

ii) *Whether the petitioner is entitled for compensation for the injuries sustained by him, if so, to what amount and from whom ?*

iii) *To what relief ?*

6. To substantiate the claim, the appellant-claimant examined PWs. 1 and 2 and marked Exs.A-1 to A4. No oral and documentary evidence was let-in by the respondents.

7. On appreciation of oral and documentary evidence placed on record, the Tribunal held on issue No.1 that the accident was caused due to the rash and negligent driving of the driver of the first respondent and the respondents 1 and 2 are jointly and severally liable to answer the claim of the petitioner-injured on the ground that Ex.A-1 is the certified copy of F.I.R., which was registered on the complaint of the petitioner/injured and Ex.A-3 is the certified copy of charge sheet, which was laid against the driver of offending lorry after due investigation establishes the fact that the accident was due to the rash and negligent driving of the offending lorry by its driver. On issue No.2, the Tribunal considered Ex.A-2 certified copy of wound certificate which goes to show that the petitioner/injured sustained a grievous injury and that the little finger of the left hand was amputated due to crush injury in the accident. Since the injury is found to be not only grievous but also resulted in the amputation of left little finger, the Tribunal awarded Rs.22,000/- towards pain and sufferance for the injury and amputation of left little finger of the petitioner-injured. In his claim-petition, the petitioner/injured contended that he

underwent treatment at Pragathi Orthopaedic and General Hospital, Kadapa and spent Rs.60,000/- towards medical expenses but did not file any medical record in proof thereof but the Tribunal granted Rs.8,000/- towards medical expenses, Rs.2,000/- towards extra-nourishment, and Rs.1000/- towards transport charges. The petitioner-claimant contended that he is a labourer and has been earning Rs.5,000/- per month but the Tribunal has determined the income of the petitioner notionally at Rs.3000/- per month as per minimum wages. As per Ex.A-2 certified copy of the wound certificate, the petitioner is aged 45 years old and the Tribunal applied the multiplier as 13. The annual income of the petitioner/injured is determined as Rs.36,000/- and multiplied with the multiplicand 13 and arrived to Rs.4,68,000/- towards compensation for partial permanent disability. The Medical Board opined that the petitioner/claimant sustained disability at 40%. The Tribunal held that the petitioner-claimant would have been eligible for compensation at Rs.4,68,000/- in the event of total disability and where the disability is only 40%, the petitioner/injured is entitled to compensation at 40% of Rs.4,68,000/- only towards compensation for partial permanent disability, therefore, the Tribunal awarded compensation at Rs.1,87,200/- towards partial permanent disability. The Tribunal, therefore, awarded total compensation of Rs.2,20,000/- under various heads together with future interest % 6% p.a. from the date of filing the claim-petition till deposit and costs pro rata and

held that the respondents 1 and 2 are jointly and severally liable to pay the same.

9. The appellant-Insurance company, who is the second respondent preferred this appeal raising various grounds in the memorandum of appeal.

11. After hearing both sides, this Court has perused the award and decree impugned in this appeal. The appellant-Insurance Company has not cross-examined the witness and has not disputed Ex.A-2 wound certificate and Ex.A-4 medical disability certificate issued by the District Medical Board, Kadpa. In the appeal, the learned standing counsel for Insurance Company, Smt. Malathi representing Sri A. Jayanthi contended that the disability fixed by the Tribunal at 40% as per Ex.A-4 for loss of little finger of left hand is contrary to Schedule-I of Workmen's Compensation Act and for loss of two fingers, the percentage of loss of earnings is 20% and in this case, the loss of earnings for the loss of little finger would be 10%. Since the Insurance Company has not contested the matter before the Court below disputing Ex.A-4 medical disability certificate issued by the District Medical Board and the Insurance company has not cross-examined PW-1. In the absence of not disputing Ex.A-4 medical disability certificate and the cross-examination of PW-1, the Tribunal has rightly rejected to grant any compensation. Hence, in the considered opinion of this Court, the award and decree passed

by the Tribunal is confirmed and this appeal is devoid of merit and the same is accordingly dismissed.

12. In the result, this appeal is dismissed without costs.

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

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JUSTICE T. AMARNATH GOUD

30-11-2018
I s L

HON'BLE SRI JUSTICE T. AMARNATH GOUD

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[R E S U L T :: APPEAL IS DISMISSED WITHOUT COSTS]

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