

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MA.CMA.NO.1996 OF 2007

JUDGMENT

Aggrieved by the judgment and decree dated 14.02.2007 passed by the court of Chairman, M.V. Act cum V Additional District Judge (F.T.C.), R.R. District at L.B.Nagar in OP.No.937 of 2004, the insurance company filed the present appeal questioning the quantum of compensation.

The 2nd respondent / claimant, is the injured. In the claim statement it is stated that on 6.8.2004 at about 10.30 a.m., when the claimant was proceeding on his scooter bearing No. AP 16 E 2448 from Dammaiguda, and that when he reached near Radhika X roads, one lorry bearing No.AHT – 3070, came in a rash and negligent manner, and dashed the scooter of the claimant. As a result of which, he received grievous injuries. Immediately, he was shifted to Poulomi Hosital, for treatment. Police of Kushaiguda Police Station, registered a case in Crime No.196 of 2004 under Section 337 of IPC against the driver of the lorry. Petitioner was hale and healthy prior to the accident. He was earning Rs.3,540/- p.m. by doing private job. Due to the accident, petitioner became disabled permanently. He suffered severe pain besides mental agony. He spent huge amounts for his medical treatment. With these averments, the claimant filed the claim petition under 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.3,00,000/-.

The 1st respondent herein – owner of the vehicle remained ex parte before the Tribunal.

The appellant herein – Insurance Company filed counter affidavit denying the averments made in the claim petition and sought for its dismissal.

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

1. Whether the accident that took place on 6-8-2004 at about 10.30 a.m. near Radhika Cross-road, is due to rash and negligent driving by the driver of lorry bearing No. AHT – 3070?
2. Whether the petitioner is entitled for compensation and, if so, from whom and to what extent?
3. To what relief?

In support of the case of the claimants, P.Ws.1 to 3 were examined and Exs.A-1 to A-9 were marked. On behalf of the insurance company, no oral evidence was adduced and Ex.B-1 copy of insurance policy was marked.

Appreciating the evidence of the claimant as P.W.1 and considering Exs.A-1 to A-3, which are copies of FIR, charge sheet and Medico Legal Case Record, the Tribunal recorded finding of fact that the accident occurred due to rash and negligent driving of the lorry bearing No. AHT 3070, by its driver. The Tribunal awarded following amounts:

(i) Shock, pain, suffering and loss of amenities of life:	Rs. 5,000-00
(ii) Injuries depending upon the disability partial, full, Temporary or permanent:	Rs. 10,000-00
(iii) Disability :	Rs.2,03,904-00
(iv) Medical and incidental expenses:	Rs. 80,725-00

	Rs.2,99,629-00

The Tribunal granted interest on the above amount at the rate of 7.5 % per annum from the date of the petition till date of realization.

Aggrieved by the quantum of compensation, the insurance company filed the present appeal.

The learned counsel appearing for the appellant – insurer only questioned the quantum of compensation contending that the Tribunal without

appreciating the evidence on record, grant excessive compensation under different heads and sought to reduce the same.

On the other hand, the leaned counsel appearing for the 2nd respondent – claimant submitted that in the accident, the claimant sustained disability to left leg and there is raumatic shortening life of lower limb and also stiffness of left knee joint and angle joint and he sustained 45 per cent disability. He further submitted that the Tribunal deducted 1/3rd of the income of the injured towards personal expenses. He contended that such deduction is not permissible in the case of injuries. If the same is not deducted, the claimant would be entitled to more compensation.

Since the claimant has not filed any appeal or cross-objections for enhancement of compensation, this court is not inclined to go into that aspect.

In the present case, there is no dispute that the accident occurred due to rash and negligent driving of the driver of the crime lorry. There is also no dispute that the policy of the crime vehicle was in force as on the date of the accident.

To prove the injuries sustained by him, the claimant examined himself as P.W.1 and deposed about the accident. P.W.2 is the doctor who treated the claimant at Polome Hospital. He issued Ex.A-7, as per which, the claimant sustained fracture to his left leg and also left side ribs besides rupture of spleen. Under the head of injuries, the Tribunal granted an amount of Rs.10,000/-.

The claimant appeared before the Medical Board, Gandhi Hospital. The Board examined the claimant and found that he sustained disability called post

traumatic shortening of lower limb and also stiffness of left knee joint and ankle joint. The said Board issued Ex.A-6 certificate, assessing the disability at 45 per cent. The claimant examined P.W.3, who was Assistant Professor in Orthopedic at Gandhi Hospital, to testify Ex.A-6 certificate.

The case of the claimant is that he is doing private job, earning an amount of Rs.3,540/- and filed Ex.A-5 certificate. The amount claimed by the claimant is quite reasonable. Therefore, the Tribunal taking the annual income of the claimant at Rs.42,480/- and after deducting 1/3rd towards personal expenses, arrived at Rs.28,320/-.

The age of the claimant is 37 years as per the claim petition, which is not disputed. The Tribunal applied the multiplier of 16, which is the appropriate as per **SARLA VERMA vs. DELHI TRANSPORT CORPORATION¹**, and arrived at the loss of income of the claimant at Rs.4,53,120/-. The claimant sustained 45% permanent disability and after deducting said percentage, granted an amount of Rs.2,03,904/- towards disability.

Considering the medical bills under Ex.A-8, the Tribunal granted Rs.80,725/- towards medical expenses.

In all the Tribunal granted an amount of Rs.2,99,629/- with interest at the rate of 7.5 per cent per annum from the date of the petition till date of realization, mulcting the liability both on the insured and the insurer jointly, as such I do not find any infirmity in the order and decree of the Tribunal.

The learned counsel for the appellant – insurance company also could point out any infirmity or perversity in the impugned judgment of the Tribunal.

¹ (2009)6 SCC 121

Hence I find no ground to interfere with the impugned judgment and the same is confirmed.

The appeal is accordingly dismissed.

Miscellaneous petitions pending if any, shall stand closed. No order as to costs.

A.RAJASHEKER REDDY,J

Date:08—02—2018

avs

