

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

THE HON'BLE SMT.JUSTICE T.RAJANI

MACMA No.2578 OF 2008

JUDGMENT: (per Hon'ble Sri Justice C.Praveen Kumar)

Challenging the judgment and award dated 22.04.2008, passed in M.V.O.P.No.211 of 2004 on the file of the IV Additional Sessions Judge, Tirupati, the claimant preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "the Act").

2. The claimant/petitioner filed an application under Section 166(1)(a) of the Act claiming compensation of Rs.65,00,000/- for the injuries suffered by him in a road accident that occurred on 29.08.2003 at about 08.30 a.m. It is stated that on that day, while the petitioner was traveling in a car bearing TN 09 AB 2874, a lorry bearing Reg.No.TNH 9025, which came in opposite direction, dashed against the said car near Kanakavallipuram of Chennai – Tiruttani Highway. Immediately, thereafter, the injured/claimant was shifted to a General Hospital at Tiruvalluru for first aid and from there to Sri Ramachandra Medical College hospital, Chennai, for further treatment. It is stated that the first respondent is the owner of the lorry and second respondent is the insurer. It is stated that the first respondent insured the vehicle in the name of the third respondent. Hence, pleaded that all the respondents are jointly and severally liable to pay compensation to the petitioner. The first and third respondents remained ex-

parte and failed to contest the proceedings. The second respondent filed the written statement denying the averments made in the petition. The respondent denied the mode of the accident, age, income and also the occupation of the petitioner. The second respondent while denying its liability also pleaded that the claim made is excessive and exorbitant; since the petitioner is not having any permanent disability except sustaining simple injuries and that there was no valid license for the driver to drive such vehicle.

3. Basing on the above pleadings, the following issues were framed:

1. "Whether the petitioner sustained injuries in a motor vehicle accident occurred on 29.08.2003 at about 08.30 a.m., due to rash and negligent driving of the driver of lorry bearing Regn.No.TNH 9025 belonging to the first respondent insured with second respondent?
2. Whether the petitioner is entitled for compensation as prayed for in the petition?
3. To what relief?"

4. During the course of enquiry, the injured examined PWs.1 to 3 and got filed Exs.A1 to A19. On behalf of the second respondent, no oral evidence was adduced but a copy of insurance policy was marked as Ex.B1. After analyzing the evidence available on record, the Tribunal held that the accident took place due to rash and negligent driving of the lorry driver, as a result of which the petitioner received injuries. After considering the evidence on record, the Tribunal awarded a sum

of Rs.2,16,325/- with interest @7.5% per annum from the date of petition till the date of payment. Challenging the said award, the claimant preferred the present appeal.

5. The finding of the tribunal with regard to the manner in which the accident took place has become final. No appeal has been filed by the Insurance company challenging the manner in which the accident took place. Therefore, the finding of the trial Court that the accident took place due to rash and negligent driving by the driver of the lorry, bearing No.TNH 9025, stands un rebutted.

6. The only point that arises for consideration is whether the compensation awarded by the tribunal for injuries sustained by the claimant is just and reasonable?

7. The main ground urged by the learned counsel for the appellant is that the Tribunal erred in awarding only Rs.2,16,325/- as against the claim of Rs.65 lakhs. He took us through the evidence of witness and also the document filed to show that the Tribunal awarded less than what the claimant is entitled to.

8. On the other hand, learned counsel for the respondents would contend that the finding of the Tribunal is based on the evidence available on record which requires no interference.

9. The fact that the petitioner is a reputed Neurologist is not in dispute. It is the case of the appellant that he being a reputed

Neurologist was earning Rs.5,80,000/- per annum and that his income is substantially reduced after the accident as he is unable to stand for long time due to pain and limping which he developed after accident.

10. Ex.A2 wound certificate would show that the petitioner received a fracture on right ankle, in the accident that took place on 29.08.2003. PW2 the Orthopedic Surgeon attached to Sri Ramachandra Medical College Hospital, Chennai, in his evidence deposed that the appellant sustained fracture in the right ankle in the accident that took place on 29.08.2003 and that he was discharged on 10.09.2003. Ex.A9 is the discharge certificate issued by hospital authorities. According to PW2, the injured sustained multiple injuries with tibial partial fracture right with pilular, fracture of right ankle and foot drop. PW2 further stated that he performed operation on the injured and that the injured is having disability. He also deposed that during the course of treatment, the petitioner must have suffered pain. According to him, the petitioner also received injuries to his eyes. PW2 also stated that as the petitioner received grievous injury, and underwent operation, he will not be in a position to attend his profession for a period of three months. His evidence further shows that due to fracture of right ankle, the injured underwent operation and that the petitioner is having 50% disability. Ex.A4 are the bunch of bills issued by Sri Ramachandra Medical College Hospital, Chennai, for the expenses incurred during the period.

Though PW2 was cross examined at length, nothing useful came to be elicited. From the evidence of PW2, it is clear that the petitioner who is a Neurologist would not be in a position to work in the same manner as he was doing prior to the accident. It was further elicited that he will not be in a position to stand for performing operation.

11. Coming to the income earned, claimant filed Ex.A7 income tax returns for the assessment year 2002-2003 to 2004-2005. It is not in dispute that the appellant was working in SVIMS Hospital, Tirupati, prior to the accident and he was getting monthly salary. PW3 was examined to speak about the income tax returns filed by the petitioner, in which, it was stated that for the assessment year 2002-2003, the gross salary of the petitioner was Rs. 4,90,890/- and for the year 2003-04, his gross salary for a period of seven months was Rs.3,37,160/-. The evidence of PW3 further shows that the petitioner was not working in SVIMS hospital, Tirupati, by the date of accident. PW3 in his evidence deposed that the petitioner resigned his job in SVIMS hospital, Tirupati and started working as a Consultant in Sri Rama Devi Multi Super Specialty Hospital, Tirupati. He filed Exs.A14 to A16 the income tax returns for the assessment years 2004-2005 to 2006-2007, which shows increase in the income of the petitioner. After examining A14 to A16, the Tribunal disbelieved the contention of the petitioner that there is loss of future earnings on the ground that as per the said exhibits, there has been increase

in the income from year to year even after the accident. It is no doubt true that PW3 in his evidence admits that there has been increase in the income of the petitioner, but had he not met with an accident, the injured could have earned much more income than what is shown in the returns. Therefore, we feel that the finding of the Tribunal with regard to future loss of earnings is incorrect. Since the petitioner being a famous Neurologist, his disability must have made him to cut down his day to day work. Having regard to the said circumstances, the income of Rs.11,500/-, which was arrived at by the Tribunal, basing on the salary certificate warrants interference.

12. Having regard to the circumstances of the case, we feel that the disability sustained can be fixed at 40% and the income be enhanced to Rs.12,000/-p.m., having regard to the earnings after the accident. Since the age of the petitioner was 50 years, the suitable multiplier to be adopted in view of the judgment of the Apex Court in **Sarla Verma Vs. Delhi Transport Corporation**¹, for calculating the loss of earnings would be '9'. Therefore, the total **loss of earnings** would be fixed at Rs.12,000 x 12 x 9 x 40% = **Rs.5,18,400/-**.

13. Insofar as total **loss of income** during the period of treatment arrived by the Tribunal at **Rs.34,500/-** warrants no interference.

¹ 2009 ACJ 1298

14. However, the amount awarded towards **pain and suffering** appears to be on a lower side. As seen from the record, soon after the accident, the appellant was immediately taken to Sri Ramachandra Medical College Hospital, Chennai, where he was admitted as in-patient for nearly 20 days. The evidence of PW2 further shows that the petitioner sustained multiple injuries and that he underwent an operation. The petitioner must have undergone lot of pain and suffering not only during the period of operation but thereafter as well.

15. Having regard to the above, we feel that the amount of Rs.20,000/- awarded for **pain and suffering** requires to be enhanced to **Rs.35,000/-**.

16. Coming to the claim of the appellant towards extra-nourishment and attendant charges, the Tribunal awarded a sum of Rs.15,400/-(Rs.10,000/-+Rs.5,400/-). But, however, the evidence on record would show that Ex.A10 – the bunch of bills said to have issued by the attendant was for Rs.19,800/-. We see no appropriate reason to disbelieve the same, moreso, when the appellant was admitted as in-patient in the hospital. Hence, the claim of Rs.19,800/- towards attendant charges can be accepted and the amount of Rs.10,000/- towards extra nourishment remains unchanged. Therefore, the total amount towards **extra nourishment and attendant charges** would be **Rs.29,800/-**.

17. Coming to the medical expenses, though the claim of the petitioner is Rs.5,00,000/-, but the certificate placed on record vide Ex.A4 and the evidence of PW2 would show that the petitioner has spent a sum of Rs.1,36,425/- which warrants no interference from this Court. Accordingly, a sum of **Rs.1,36,425/-** is awarded towards **medical expenses**.

18. Coming to Ex.A13, the cash receipt of Rs.49,735/- which is said to have been issued by Dr.Agarwal Eye Hospital Limited, Chennai, the petitioner did not choose to examine any person concerned with the said certificate to prove that he received injuries to his eyes in the accident and that he took treatment in Agarwal Eye Hospital Limited, Chennai. In the absence of any evidence, the Tribunal rightly rejected the claim of Rs.49,735/-.

19. Further, a sum of Rs.10,000/- was awarded towards transport charges as against the claim of Rs.50,000/- and the same in our view appears to be incorrect for the reason that as per Ex.A11 issued by Sai Travels, Tirupati, charges for transportation was Rs.12,840/-. Though none were examined to prove the contents of Ex.A11, but having regard to the fact that immediately after the accident, the petitioner was shifted from the place of accident to Chennai and then to Tirupati, the amount awarded can be enhanced to Rs.12,840/-.

20. At this stage, it is to be noted that the trial Court did not award any amount towards loss of amenities. Infact the

judgment nowhere indicates as to why the said amount was not awarded. The fact that the petitioner underwent surgery, that he was an in-patient in the hospital, is not in dispute. The fact that he was dependant on attendant for sufficiently long time is also not in dispute. The evidence of PW2 further shows that the petitioner was put to lot of discomfort, not only after surgery, but also due to pain and disability. Having regard to the above, we feel that it would be just and proper to award a sum of **Rs.25,000/- towards loss of amenities.**

21. Hence, the petitioner is entitled for the following amounts:

Loss of future earnings due to disability(12000x12x9x40%):	Rs. 5,18,400/-
Loss of income during period of treatment:	Rs. 34,500/-
Pain and suffering:	Rs. 35,000/-
Extra nourishment & attendant charges:	Rs. 29,800/-
Medicines expenses:	Rs. 1,36,425/-
Transport charges:	Rs. 12,840/-
Loss of amenities:	<u>Rs. 25,000/-</u>
	<u>Rs. 7,91,965/-</u>

22. Thus, the petitioner is totally entitled to Rs.7,91,965/- as against Rs.2,16,325/- granted by the Tribunal, however, with

interest at the rate of 7.5% per annum, from the date of petition till realization.

23. Accordingly, the appeal is allowed in part. There shall be no order as to costs.

24. Miscellaneous petitions pending in this appeal, if any shall stand closed.

C. PRAVEEN KUMAR, J

T.RAJANI, J

19.07.2018
vhb

