

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A. No. 668 OF 2011

JUDGMENT:

This appeal is filed by the appellant/injured claimant under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 28.02.2009 passed by the Chairman, Motor Accidents Claims Tribunal-cum-III Additional District Judge (FTC), Kadapa at Rajampet, in M.V.O.P.No.339 of 2004, wherein and whereby the Tribunal granted compensation of Rs.3,33,078.35 Ps. against the claim of Rs.5 lakhs.

2. The brief facts of the case are that on 30.12.2002 at about 11 p.m., the claimant and other persons of Duggalapdu Village started for a pilgrimage to Ayyappaswamy temple at Sabarimala by a tempo cab bearing No.AP26T 9225 and at about 2 a.m. on 31.12.2002 when the vehicle crossed the road, a bus bearing No.TN29Y 4509 came in opposite direction from Melmaruvattur and drove it by its driver in a rash and negligent manner and dashed the tempo in which the claimant and other passengers were traveling. As a result of the accident, the tempo was seriously damaged and two among the passengers were died on the spot and some others along with the claimant injured seriously.

The appellant/claimant filed the claim petition claiming compensation of Rs.5 lakhs under Section 166 r/w 163-A of

the Act and Rule 476 of the APMV Rules, 1989 against the respondents 1 to 4 alleging that he sustained injuries in the accident occurred on 31.12.2002 due to rash and negligent driving of the driver of the bus bearing No.TN29Y 4509.

3. Respondents 1, 3 and 4 were set *ex parte* before the Tribunal.

4. The 2nd respondent filed counter denying the averments of the claim petition.

5. Based on the pleadings, the Tribunal framed the following issues:

- 1) Whether the petitioner received injuries in the motor vehicle accident that occurred on 31.12.2002 at about 2.00 a.m. due to rash and negligent driving of 1st respondent's bus bearing Registration No.TN29Y 4509 by its driver?
- 2) Whether the petitioner is entitled for compensation and if so, to what amount and from whom?
- 3) To what relief?

6. During the course of trial, the appellant/claimant himself examined as PW1 and got examined PW2 Dr.S.Vidya Sagar and got marked Exs.A.1 to A.5 and Ex.X.1 case sheet. On behalf of the 2nd respondent, none was examined and no documents were marked.

7. The appellant in his claim statement stated that he sustained multiple injuries on his entire body and more

particularly on his right side. The impact of the accident was such that despite conducting multiple surgeries on his body, he is unable to stand and walk freely even after two years after the accident. He was treated at Ruya (SVRR) Government Hospital, Tirupati as an inpatient for 1 ½ years. He stated that he was hale and healthy prior to the accident and was earning Rs.4,500/- per month by doing small business. Due to the accident, he remained useless in life and depending on others for his calls of nature also. He also stated that he spent considerable amount towards transportation, medicines and extra-nourishment and he has to incur some more expenses to get the steel rods removed from his legs at the hospital. He stated that he sustained 97% disability due to the accident and his source of earning was lost.

8. PW2, the doctor who issued medical certificate Ex.A.4, certified the rate of disability as Permanent Partial Disability of 97%. The wound certificate was marked as Ex.A.5, which shows that the injuries sustained by the claimant are four in number and out of which, three are grievous in nature and one is simple in nature.

9. Based on the evidence available on record, the Tribunal held that the accident was occurred due to rash and negligent driving of the driver of the bus bearing No.TN29Y 4509 by its

driver and the same is not disputed by the contesting 2nd respondent/Insurance company.

10. The Tribunal has taken the notional income of the appellant-injured as Rs.3,500/- per month considering his lifestyle and that his age was taken as 40 years and for this reason, the multiplier “15” was taken according to Schedule II appended to the Act as he was in the age group of 40 to 45 at the time of accident, and thereby his annual income was taken as Rs.42,000/- and multiplied with the multiplier “15”, which comes to Rs.6,30,000/-. The Tribunal has taken 60% disability instead of 97% and arrived the compensation towards loss of earnings and permanent disability as Rs.3,78,000/- (Rs.6,30,000/- X 60/100). But, the award is restricted to Rs.2,00,000/- as per the claim under the head of loss of earnings and permanent disability.

11. The Tribunal also granted an amount of Rs.27,078.35 Ps. towards medical expenses against the claim of Rs.2 lakhs towards medicines, treatment, travelling, attendant charges and extra-nourishment. The Tribunal granted Rs.20,000/- towards transportation charges; Rs.16,000/- towards pain and suffering; Rs.10,000/- towards extra-nourishment and food; Rs.10,000/- towards medical expenses in future; Rs.10,000/- towards attendant charges; and Rs.40,000/- towards loss of amenities.

12. The appellant/claimant not being satisfied with the total compensation of Rs.3,33,078.35 Ps., filed the present appeal.

13. The learned counsel for the appellant/claimant would contend that the Tribunal grossly erred in taking Rs.3,500/- per month as notional income of the appellant/claimant in spite of the evidence of PW1-injured witness as he was doing business and that evidence was not challenged. The Tribunal took the disability at 60% merely on the ground that the appellant failed to produce the supporting evidence. He further contended that even for agriculturists, the notional income can be taken as Rs.4,500/- per month, but the appellant was doing business and he was hale and healthy prior to the accident. He placed reliance on the judgment of the Hon'ble Supreme Court in *Sri Ramachandrappa Vs. Manager, Royal Sundaram Alliance Insurance Company Limited*¹. The Tribunal ought to have taken Rs.4,500/- instead of Rs.3,500/- towards monthly earnings of the appellant. He further contended that the Tribunal erred in taking 60% disability instead of 97% even though it is supported by disability certificate issued by PW2 stating the disability as permanent partial of 97% and further steel rods were inserted and his movement is restricted. He further contended that even the appellant could not attend for nature calls on his own and attendant is very much required and restricting the compensation to Rs.2 lakhs for loss of earnings

¹ 2011(6) ALT 48 (SC)

and permanent disability is illegal. The Tribunal also granted very meagre amounts towards medical expenses, attendant charges, loss of amenities and future medical expenses. He contended that for two years treatment in the hospital, the Tribunal granted only Rs.20,000/- towards transportation charges. The Tribunal ought to have granted Rs.50,000/- towards compensation for pain and suffering for three grievous injuries and one simple injury, but it granted only Rs.16,000/-. The appellant was bedridden and stayed in the hospital for a period of two years for treatment. The Tribunal ought to have granted Rs.30,000/- towards pain and suffering. The Tribunal granted Rs.10,000/- towards extra-nourishment and food instead of Rs.25,000/-. The Tribunal granted Rs.10,000/- for attendant charges, Rs.40,000/- towards loss of amenities and Rs.10,000/- for future medical expenses. The Tribunal ought to have granted Rs.25,000/- for removal of rods, for treatment and medicines, but the Tribunal granted merely Rs.10,000/- against the claim of Rs.2 lakhs.

14. The learned counsel for the 2nd respondent would contend that the Tribunal granted just and fair compensation to the appellant for the injuries he sustained and the Tribunal has rightly taken Rs.3,500/- per month towards notional income and disability at 60%. Moreover, the appellant is not entitled for any enhancement of amount over and above the compensation granted by the Tribunal.

15. However, this Court based on the evidence found that it is just and fair to take Rs.4,500/- per month as the notional income of the appellant as Held by the Hon'ble Supreme Court as the appellant was hale and healthy prior to the accident and he was aged about 40 years at the time of accident and was doing business. Even the notional income of the agriculture labour can be taken at Rs.4,500/- as held by the Hon'ble Supreme Court in catena of decisions. Further, this Court found that the Tribunal has grossly erred in taking the disability sustained by the appellant/claimant as 60% instead of 97% though the disability is supported by the disability certificate Ex.A.4 and the evidence of doctor PW2. The conclusion arrived at by the Tribunal for taking disability at 60% is contrary to the evidence. The appellant/claimant is certainly entitled for compensation for 97% disability.

16. Therefore, loss of earnings for permanent disability has to be calculated by taking Rs.4,500/- per month as notional income and multiplier of "15". Therefore, the appellant is entitled for Rs.7,85,700/- (Rs.4500 X 12 X 15 x 97/100).

17. The Tribunal ought to have granted the compensation of Rs.2 lakhs as he received grievous injuries and hospitalised for about two months and steel rods were inserted, under different heads by apportioning as follows:

- | | |
|--|-------------------|
| 1) Compensation for transportation charges | – Rs.30,000/- |
| 2) Compensation for pain and suffering | – Rs.32,500/- |
| 3) Compensation for extra-nourishment | – Rs.20,000/- |
| 4) Compensation for Medical expenses | – Rs.27,100/- Ps. |
| 5) Compensation for Medical expenses in future | – Rs.25,000/- |
| 6) Compensation for Attendant charges | - Rs.20,400/- |
| 7) Compensation for loss of amenities | – Rs.45,000/- |

Therefore, in all, the appellant/claimant is entitled for Rs.9,85,700/- (Rs.7,85,700/- + Rs.2,00,000/-).

18. Though the compensation claimed by the injured claimant before the Tribunal was only Rs.5 lakhs, in view of the decision of the Hon'ble Supreme Court in ***Nagappa vs. Gurudayal Singh and others***², there is no restriction in M.V. Act that the compensation should be awarded only upto the claim made by the claimants. Hence, the compensation awarded by the Tribunal is enhanced to Rs.9,85,700/-. However, the appellant/injured claimant shall pay the difference of Court Fee for the excess amount of Rs.4,85,700/-.

19. As the accident had taken place on 31.12.2002, the Tribunal has rightly granted interest at 9% per annum from the date of filing of the claim petition till the date of realisation. However, on the enhanced amount of

² (2003) 2 SCC 274

compensation, the appellant/claimant is entitled for interest at 7.5% per annum from the date of this order till the date of realisation.

20. The appeal is accordingly allowed. No order as to costs.

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

JUSTICE M.GANGA RAO

12-10-2018
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