**HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY**

**MACMA.No.2080 of 2009**

**JUDGMENT:**

Having dissatisfied, with the award of Rs.25,000/- as compensation for the injuries sustained by the petitioner in a road accident, by the award and decree dated 13-08-2007 in M.V.O.P.No.498 of 2003 on the file of the Chairman, Motor Accident Claims Tribunal-cum-Additional District Judge, Kadapa (for short, 'the Tribunal'), as against the claim of Rs.2,00,000/- the petitioner – claimant preferred the instant appeal under Section 173 of the Motor Vehicles Act, seeking enhancement of compensation.

The appellant herein, who is the injured, is the petitioner, while respondents 1 to 4 herein were respondents 1 to 4 respectively, in the original petition.

For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

The factual background of the case in brief is that On 28-11-2001 at about 8.30 am, on Boregao road turning with Limkhada Police Station limits, Dhanpur Taluk, Dahod District, Gujarath State, the driver of Tractor bearing No.G.J.2013-693 with trally bearing No.G.J.207-18161, belongs to respondent No.1, drove the vehicle in a rash and negligent manner and at high speed dashed against the petitioner, who was proceeding on TVS XL Moped bearing No.APSR 5107 as a pillion rider, due to which the petitioner received grievous injuries and his left leg was fractured. Soon after the accident, the petitioner was admitted in General hospital, Dahod and took treatment from 28-11-2001 to 15-12-2001 during this period, he was operated and steel rod was fixed over his left leg. Later the petitioner took treatment in Government head-quarters hospital, Kadapa for eight days and also at National Institute Hospital, Pondicherry and by the date of filing OP, petitioner was taking treatment under Dr.G.Venkata Subbaiah. Inspite of that, the petitioner could not recover from the injuries and he spent more than Rs.30,000/- for the treatment and medicines. The petitioner is doing nursery business and thereby earning Rs.5,000/- per month. Hence the petitioner filed OP for Rs.2,00,000/-.

Before the Tribunal, respondent Nos.1 and 3 remained exparte.

Respondent No.2 is the Insurance Company with whom tractor and trailer was insured filed counter denied the manner of accident and contended that criminal case was registered against the rider of TVS XL Super bearing No.AP 5R 5107 of respondent No.3 and insured with respondent No.4. It is also contended that all the panchayatdors, who have participated in the panchanama observed that the accident occurred due to rash and negligent driving of TVS XL only. As such, respondent No.2 is not liable to pay any amount towards compensation. The petitioner has to prove that driver of the tractor and trailer had valid driving licence at the time of accident.

Respondent No.4 filed counter and additional counter stating that the petitioner has to prove the accident by way of documentary evidence. As per the report, the rider of the TVS XL on which the claimant was allegedly was a pillion rider and caused the accident by his rash and negligent riding of Two wheeler. As such, no body is liable to pay compensation to the claimant, it is the owner of the said TVS XL and its insurer to pay compensation. It is further stated that except medical bills for Rs.4700/-, there is no other document to show that the claimant was also treated at Kadapa. The treatment undergone by the petitioner, the expenditure incurred by him, the age, occupation and income of the petitioner are also denied by respondent No.4.

In order to prove his claim, the petitioner himself was examined as PW.1, the rider to TVS XL Super and eye-witness as PW.2 and the Medical officer as PW.3. Exs A-1 to A-9 are marked.

Basing on the above evidence, the Tribunal granted Rs.25,000/- in lumpsum directing respondents 3 and 4 to pay jointly and severally with interest @ 7.5% per annum from the date of filing petition till the date of deposit. Hence, the appeal.

Learned counsel for the petitioner submits that though Ex.A.6 disability certificate is marked through PW.3, who is the Doctor, no amount is granted towards permanent disability. He also submits that no separate amount was awarded towards pain and suffering. The petitioner is doing nursery business and earning Rs.5,000/- per month. Though the petitioner suffered two fractures and he was operated also and was in hospital for eight days, no amount was awarded towards loss of earnings. He placed reliance on the judgment of Supreme Court in **Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Limited**[1] and wherein, the Supreme Court has taken into account the statement of the appellant therein, who was working as a coolie and held that in and around the date of accident, the wage of a labourer was between Rs.100 to Rs.150 per day or Rs.4500/- per month and in the said case, accident occurred in the year 2004 and the present road accident occurred in the year 2001. In the case before Supreme Court, the Tribunal reduced the earning of the appellant from Rs.4500/- to Rs.3000/- per month and has taken view that there was no reason for the Tribunal to reduce the same and accepted his statement that his monthly earning was Rs.4500/-.

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[1] (2011) 13 Supreme Court Cases 236

Heard learned Standing Counsel appearing for respondent No.4, who, submits that there is no proof of income of the petitioner and disability is also not proved. As such, the Tribunal had granted Rs.25,000/- as compensation and the same does not require any interference.

In this case, it is to be seen that PW.3 in his evidence stated that he was one of the members of District Medical Board, Kadapa and also an Orthopaedic Specialist. PW.1 appeared before the said Medical Board on 13-07-2007 and on examination found Mal-united fracture of both bones of left leg, scarring on the anterior aspect of upper end of left leg. It is further stated that he assessed 30% permanent disability and it is caused by injuries mentioned in Ex.A.2 wound certificate. In his cross-examination though it is stated that the petitioner was suffering from Polio, but in the chief examination it is clearly stated that basing on the Mal-united fracture, permanent disability is assessed at 30%. Even though, the Tribunal has not granted any amount towards permanent disability. It is to be further seen that the petitioner suffered two fractures and rods were also inserted. In the facts and circumstances of the case, this Court feels that it is just to assess the permanent disability at 15%.

***In Syed Sadiq and others v. Divisional Manager, United India Insurance Company Limited*** [2] at para 8, the Suprem Court held as follows;

> "….It is difficult for us to convince ourselves as to how a labour involved in an unorganized sector doing his own business is expected to produce documents to prove his monthly income. In this regard, this Court, in *Ramachandrappa v. Royal Sundaram Alliance Insurance Co.Ltd. reported in (2011) 13 SCC 236, has held as under: (SCC pp.242-43, paras 13-15)*
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> *"13. In the instant case, it is not in dispute that the appellant was aged 35 years and was working as a coolie and was earning Rs.4,500/-per month at the time of the accident. This claim is reduced by the Tribunal to a sum of Rs.3,000/- only on the assumption that the wages of a labourer during the relevant period viz. in the year 2004, was Rs.100 per day. This assumption in our view has no basis. Before the Tribunal, though the Insurance Company was served, it did not choose to appear before the Court nor did it repudiate the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning to be a sum of Rs.3,000/- per month. Secondly, the appellant was working as a coolie and therefore, we cannot expect him produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant.*

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[2] (2014) 2 Supreme Court Cases 735

> *14. We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guesswork. Which may include the ground realities prevailing at the relevant point of time.*
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> *15. In the present case, appellant was working as a coolie and in an around the date of the accident, the wage of a labourer was between Rs.100 to Rs.150 per day or Rs.4,500 per month. In our view, the claim was honest and bonafide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the appellant from Rs.4,500 to Rs.3,000 per month. We therefore, accept his statement that his monthly earning was Rs.4,500.*
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> 9. There is no reason in the instant case for the Tribunal and the High Court to ask for evidence of monthly income of the appellant claimant. On the other hand, going by the present state of economy and the rising prices in agricultural products, we are inclined to believe that a vegetable vendor is reasonably capable of earning Rs.6,500/- per month."

The Supreme Court while dealing with the case of a coolie and also vegetable vendor made the above observations.

In this case also PW.1 stated that he was doing nursery business and earning Rs.5000/- per month. In view of the same, by relying on the judgment of **Syed Saidiq** cited supra**,** this Court also feels it just and proper to take Rs.4500/- per month as the income of the petitioner. It is stated by learned counsel for the petitioner that age of the petitioner as on the date of accident is '54' years and by taking the age of the petitioner as '54' years, and as per the Apex Court judgment of **Sarla Verma v. Delhi Transport Corporation**[3] the relevant multiplier is "11" for the age group between 51 to 55 years. When the said multiplier factor '11' is applied and disability is taken at 15%, the loss of earnings works out to Rs.89,100/-. (4500/- X 12 X '11'=59400 X'15'/100=Rs.89,100/-). In addition to this, as the petitioner stated that he suffered grievous injuries and steel rods were inserted and till the date of filing MVOP he is taking treatment, he is also entitled to Rs.15,000/- towards pain and suffering and an amount of Rs.4700/- is granted towards medical expenses, as some medical bills were already filed vide Ex.A.5 to that effect and an amount of Rs.10,000/- is granted towards extra-nourishment. As per the evidence, the petitioner was in hospital for a period of one month i.e. from 28-11-2001 to 15-12-2001. As such, Rs.3000/- is granted towards loss of earnings, while the petitioner was in hospital.

Thus, the petitioners are entitled to a total sum of Rs.1,21,800/- (Rupees One lakh twenty one thousand eight hundred only) as against Rs.25,000/- granted by the Tribunal, towards compensation and the same

[3] (2009) 6 Supreme Court Cases 121

is accordingly granted. Since the rate of interest awarded by the Tribunal at 7.5% per annum is in accordance with the rate of interest awarded by the Supreme Court in **Rajesh v. Rajbir**[4] case, the same rate of interest is maintained on the entire amount awarded from the date of petition till realisation.

Accordingly, the appeal is allowed in part modifying the order passed by the Tribunal, by enhancing the compensation, as indicated above, and confirming the same in all other respects, including the rate of interest. There shall be no order as to costs.

As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand disposed of.

**A.RAJASHEKER REDDY,J**

16-02-2018

Nvl

[4] 2013ACJ 1403=2013(4) ALT 35