

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA.No.585 OF 2006

JUDGMENT:

Having got dissatisfied with the amount of Rs.63,400/- granted as compensation by the award and decree dated 10.01.2006, passed in O.P. No.751 of 2003 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-I Addl.Metropolitan Sessions Judge – cum- XV Additional Chief Judge, Hyderabad (for short, ‘the Tribunal’), as against the claim of Rs.2,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, ‘the Act’), the petitioner-claimant preferred the instant appeal under Section 173 of the Act, seeking enhancement of compensation.

2. The appellant herein is the petitioner-claimant, while the respondent Nos.1 and 2, who are the owner and the insurer of the DCM van bearing registration No.AP 13 V 2929, were respondent Nos.1 and 2, respectively, in the original petition.

3. The facts, in brief, are that on 04.01.2003 at about 12.30 p.m., the petitioner was standing near Grampanchayat Office, Agapally Village and watching Janmabhoomi grama sabha, one DCM van bearing No.AP 13V 2929 came from Ibrahimpatnam side in a rash and negligent manner with high speed and without observing traffic rules and lost control over the vehicles came and dashed the petitioner and ran over his left leg, due to which the

left leg of the petitioner was crushed and sustained other multiple injuries all over the body. Immediately he was shifted to OGH for treatment. The police, Manchal registered a case in Cr.No.1/2003 under Section 338 IPC against the driver of the DCM van. Due to the accident the petitioner's left foot was amputated and he became disabled having suffered partial permanent disability, and the petitioner sought a compensation of Rs.2,00,000/-.

4. The 1st respondent remained exparte before the Tribunal and the 2nd respondent-Insurance Company filed counter denying the allegations leveled in the claim petition. It is further stated that the driver of the DCM van had no valid driving licence to drive the vehicle; and that the compensation claimed by the claimant is excessive.

5. Basing on the said pleadings, the Tribunal framed three issues about the responsibility for the accident.

6. During enquiry, the claimant's father is examined as PW1, besides examining his mother as PW2 who is an eye witness to the accident and Exs.A.1 to A.8 are marked. On behalf of respondents no evidence is adduced but Ex.B1-insurance policy was marked.

7. The Tribunal, on appraisal of evidence on record, and relying on the oral evidence of PWs1 and 2 and documentary

evidence Exs.A1 and A2 came to the conclusion that due to rash and negligent driving of the DCM Van belonging to the 1st respondent, the accident occurred and tendered the finding on Issue No.1 in favour of the petitioner.

8. On Issue No.2 regarding quantum of compensation the Tribunal granted Rs.322/- towards purchase of medicines and treatment besides Rs.3,000/- towards extra nourishment, attendant charges and transport charges and Rs.15,000/- towards pain and suffering. Under the head loss of earnings on account of partial permanent disability the Tribunal by taking into consideration of the second schedule appended to 163-A of M.V. Act, fixed the notional income of the petitioner at Rs.15,000/- and disability at 20% and by applying '15' as multiplier arrived at a sum of Rs.45,000/-. Thus, in all, the petitioner was granted a sum of Rs.63,322/- as compensation payable by respondents 1 and 2 jointly and severally with proportionate costs and interest @ 9% per annum from the date of petition till the date of realization.

9. It is the aforesaid order which is challenged in the instant appeal by the petitioner contending in the grounds that the Tribunal granted a meagre amount of Rs.63,322/- towards compensation, as against the claim of Rs.2,00,000/- laid under Section 166 of the Act, though, the petitioner sustained crush injury to his left foot and underwent surgery and admitted as

inpatient for a period of 27 days and his left foot was amputated. He also contends that appellant/injured is aged about 10 years at the time of accident and his future prospects were badly affected by the disability caused to him. He also contends that the Tribunal has taken the disability at 20% as against the disability assessed by the medical board to a tune of 30%.

10. Heard learned counsel for the 2nd respondent.

11. Perused the order under challenge and the evidence on record.

12. It is to be seen that the Tribunal while calculating the loss of earnings reduced the disability from 30% to 20% stating that the sufferance of the petitioner may not be constant in future by passage of time, which is erroneous. Amputation of left foot is a permanent feature and the petitioner has to suffer throughout his life. As such 30% disability certified by the doctor has to be taken into consideration while calculating the loss of earnings due to disability. With regard to multiplier the Tribunal has taken '15' as multiplier. But, as per the law laid down by the Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation** ¹, the multiplier '18' has to be taken. When the said multiplier factor '18' is applied, the loss of earnings on account of partial permanent disability works out to Rs.81,000/- (15,000 x 30% x 18).

¹ (2009) 6 SCC 121

13. The petitioner being a minor boy must have undergone lot of pain and suffering as his left foot was crushed. As such the amount under the head pain and suffering is enhanced to Rs.30,000/-, as against the amount of Rs.15,000/- granted by the Tribunal.

14. Petitioner claimed Rs.30,000/- towards medical expenditure, Rs.5,000/- towards extra nourishment and Rs.5,000/- towards transport charges to hospital. But, he did not produce any documentary evidence in support of the claim of medical expenditure, except seven bills amounting to Rs.322/-. Thus, the amount granted by the Tribunal under this head i.e. Rs.322/- is justifiable and the same is rounded to Rs.500/-. However, as the petitioner's left foot was amputated petitioner might have incurred some expenditure towards extra nourishment. Hence, the entire amount claimed by the petitioner under this head i.e. 5,000/- is granted as against Rs.3,000/- granted by the Tribunal under this head. As petitioner's left foot was amputated the parents might have spent lot of amount towards traveling and might have left their occupation and attended the petitioner. As such, the amount claimed by the petitioners under transport charges i.e. Rs.5,000/- is granted towards transportation besides Rs.5,000/- towards attendant charges. Thus, in total an amount of Rs.1,26,500/- (81,000 +

30,000 + 500 + 5,000+ 5,000 + 5,000) is granted to the petitioner/injured towards compensation.

15. Accordingly, the MACMA is allowed granting compensation of Rs.1,26,500/- as against Rs.63,400/-, awarded by the Tribunal and the same is accordingly granted. The petitioner is entitled to interest on the enhanced compensation of Rs.63,100/- at 7.5% per annum from the date of petition till realization, as per the decision of the Apex Court in **Rajesh and others v. Rajbir Singh and others** ².

16. Accordingly, the instant 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. 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

22.02.2018
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² 2013 ACJ 1403 = 2013 (4) ALT 35