

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA.No.909 of 2006

JUDGMENT:

The present appeal is preferred against judgment and decree dated 30.11.2005 in M.V.O.P.No.608 of 2003 seeking to enhance the compensation, on the ground that the amount of Rs.38,000/- with interest at 6% per annum granted by the Chairman: Motor Vehicles Accidents Claims Tribunal-cum-V Addl. District Judge, Guntur (for short 'the Tribunal'), is very meagre and not in accordance with the legal principle governing determination of compensation under Sections 163-A and 166 of the Motor Vehicles Act, 1988.

2. For the sake of convenience, the parties hereinafter will be referred to as arrayed in the Original Petition. Petitioner filed claim petition claiming compensation of Rs.1,00,000/- on the ground that he sustained permanent disability due to injuries, in road accident that occurred on 30.06.2003 at about 4.00 p.m, while he was proceeding on a Hero Honda Motor cycle from Bapatla town to Karlapalem village, when the same came near Gamaxin Mill in Karlapalem village, a Ambassador car bearing registration No.AP 7X 67 came with high speed in a rash and negligent manner, dashed against the motor cycle. As a result of which, the petitioner fell down on the road and received fracture to his left leg below knee. Soon after the accident, he was shifted to Venkateswara Nursing Home, Bapatla for treatment. As the accident occurred due to rash and negligent driving of the

offending car, a case in Cr.No.41/2003 was registered against the driver of the said car. As such, the 1st respondent being the owner and the 2nd respondent being insurer, are jointly and severally liable to pay compensation.

3. The first respondent remained *exparte*, while the 2nd respondent filed counter denying all the allegations in the petition stating that since the motor cycle involved in the accident, the owner and rider of the motor cycle was not impleaded as parties, as such, the petition is bad for non-joinder of proper and necessary parties; that the accident had not occurred due to rash and negligent driving of the driver of the offending car; that the compensation claimed by the petitioner is very excessive; that the offending vehicle involved in accident is a Taxi Cab, but the driver of the same is not authorized to drive Taxi Cab; that since the insured violated the terms and conditions of insurance policy, this respondent is not liable to pay any compensation to the petitioner.

4. Basing on the above pleadings, the following issues have been framed:

- 1) Whether the accident occurred due to rash and negligent driving of the Ambassador Car bearing No.AP 7X 67 by its driver? and if so, the petitioner sustained any injuries?
- 2) What is the just amount of compensation that the petitioner can be granted?
- 3) To what relief?

5. The Tribunal, after considering the rival contentions of both parties, examined P.Ws.1 and 2 and marked Exs.A1 to A3 and

Ex.X1 on behalf of the petitioner. On behalf of the 2nd respondent, R.Ws.1 and 2 were examined and got marked Exs.B1 to B3 and Ex.X2.

6. Heard learned counsel for the petitioner and Sri P.Bhanu Prakash, learned Standing Counsel for the 2nd respondent. Though, service was not completed on respondent No.1, since he remained *ex parte* before the Tribunal, his absence makes no difference in adjudicating this Appeal.

7. The fact-situation occurring in the instant case, as to taking place of the accident and the injuries sustained by the petitioner, is not in dispute.

8. Learned counsel for the petitioner submits that though the petitioner was working as clerk in a cloth shop and earning Rs.3,000/-, the Tribunal has taken Rs.15,000/- per annum as notional income basing on Schedule II of the Motor Vehicles Act, which is erroneous. He also submits that the compensation awarded by the Tribunal with regard to loss of earnings during the period of hospitalization, pain and suffering, extra nourishment and also compensation in respect of grievous injury was on lower side and same has to be enhanced.

9. In this case, as far as permanent disability sustained by the petitioner is concerned, the Tribunal, after analyzing the evidence of P.Ws.1 and 2, coupled with documentary evidence i.e., Ex.X1 case sheet, Ex.A2 wound certificate, concluded that the petitioner is aged 25 years and he sustained 15% of permanent disability in

the accident that occurred on 30.06.2003. So far as earnings of the petitioner is concerned, it is the claim of the petitioner that he is working as clerk in a cloth shop of one Maraka Prasad and earning Rs.3,000/- per month. Since, he has not produced any documentary proof or any oral evidence is let in to show that he was earning an amount of Rs.3,000/- per month, the Tribunal has taken Rs.15,000/- per month as notional income and assessed loss of income at Rs.38,250/- by taking multiplier as '17'. Since the petitioner claimed only Rs.25,000/- under that head, the same was restricted to Rs.25,000/- only.

10. The Hon'ble Supreme Court in the judgment reported in **Sri Ramachandrappa v. Manager, Royal Sundaram Alliance Insurance Company Limited**¹ held as follows:

"14. In the instant case, it is not in dispute that the appellant was aged about 35 years and was working as a Coolie and was earning `4500/- per month at the time of accident. This claim is reduced by the Tribunal to a sum of `3000/- only on the assumption that wages of the labourer during the relevant period viz. in the year 2004, was `100/- per day. This assumption in our view has no basis. Before the Tribunal, though Insurance Company was served, it did not choose to appear before the Court nor did it repudiated 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 a sum of `3000/- per month. Secondly, the appellant was working as a Coolie and therefore, we cannot expect him to 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. 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

¹ 2011 (6) ALT 48 (SC)

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 guess work, which may include the ground realities prevailing at the relevant point of time. In the present case, appellant was working as a Coolie and in and around the date of the accident, the wage of the labourer was between `100/- to 150/- per day or `4500/- 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 `4500/- to `3000/- per month. We, therefore, accept his statement that his monthly earning was `4500/-."

11. As per the aforesaid judgment, even the income of a labourer was considered as Rs.4,500/- per month. In the instant case, since the petitioner himself pleaded that he used to earn Rs.3,000/- per month by working as a clerk in cloth shop of Maraka Prasad, same can be taken into consideration while calculating loss of income due to 15% disability sustained by him in the accident. As per Ex.A2 Wound Certificate issued by Civil Assistant Surgeon, Area Government Hospital, Bapatla and as well as Ex.X1 case sheet of P.W.1 maintained by G.G.H, Guntur, the age of the petitioner is shown as 25 years, as such, same can be taken for calculating the multiplier to assess the loss of income due to permanent disability. As per judgment of Hon'ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**², the appropriate multiplier to be applied for arriving for the age of the petitioner is '18' and when the same is applied, it comes to **Rs.97,200/-** (Rs.3,000/- x 12 x 18 x 15%), towards 15% loss of

² (2009) 6 SCC 121

income towards permanent disability. Considering the gravity of injuries, the Tribunal noticed that the petitioner might have taken treatment for 40 days and granted Rs.2,000/- by calculating his income at Rs.50/- per day. As I have already taken the income of petitioner as Rs.3,000/- per month supra, as such, his loss of income during treatment can be assessed at **Rs.4,000/-**. Though the petitioner claimed Rs.15,000/- towards damages for extra nourishment, conveyance, attendant and medical expenses, Tribunal granted only Rs.3,000/- under that head, since the petitioner failed to produce any medical bills or prescriptions for the same. The amount granted by the Tribunal is on lower side, since the petitioner sustained grievous fracture injuries and took treatment for more than one month, an amount of **Rs.15,000/-** can be granted towards extra-nourishment and medical expenses, instead of Rs.3,000/- granted by the Tribunal.

The petitioner claimed a sum of Rs.15,000/- towards pain and suffering. The Tribunal noticed that the petitioner sustained three simple injuries and one grievous injury. The Tribunal, by considering the gravity of injuries sustained by the petitioner, granted only Rs.8,000/-. The Tribunal has granted only Rs.1,000/- towards simple injuries and Rs.5,000/- towards grievous injury and in all granted Rs.8,000/-, as such, the same can be enhanced to Rs.5,000/-each towards simple injuries and Rs.25,000/- towards grievous injury, respectively and in all **Rs.40,000/-** (Rs.5,000/- x 3 + Rs.25,000 x 1). Since the

petitioner sustained a grievous fracture injury, an amount of **Rs.15,000/-** can be granted towards pain and suffering.

In all, the petitioner is entitled for the compensation under the following heads:

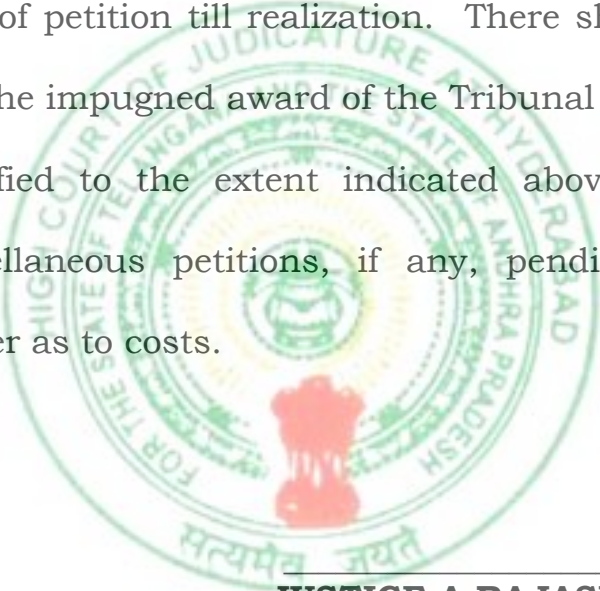
a) Loss of future income	:Rs. 97,200/-
b) Loss of income during treatment	:Rs. 4,000/-
c) Extra nourishment & Medical expenses	:Rs. 15,000/-
d) Pain and suffering	:Rs. 15,000/-
e) Simple and Grievous injuries	:Rs. 40,000/-
Total	:Rs.1,71,200/-

The petitioner claimed Rs.1,00,000/- towards compensation, but as per the Judgment of Hon'ble Supreme Court in **Nagappa vs. Gurdoyal Singh**³ ruled that award of compensation in excess of amount claimed in the claim petition is permissible, as there is no stipulation in the **Motor Vehicle Act** to restrict award of compensation limited to the claim made by the claimants. It was also observed that technicalities of law should not be permitted to stand in the way and a fair compensation should be paid in respect of deaths. The claimants therein were awarded more than claim made by them, as it was found they were entitled for more compensation than claimed. Applying the ratio laid down in the aforesaid case, petitioner is entitled to Rs.1,71,200/-. So far as the interest is concerned, the Tribunal awarded only 6% per annum on Rs.38,000/-. The petitioner is entitled to interest on

³ 2002 AIR SCW 5348

the compensation amount shall be at the rate of 7.5% per annum from the date of petition till realization, as per the decision of the Hon'ble Apex Court in ***Rajesh and others v. Rajbir Singh and others***⁴. The petitioner made a claim only for a sum of Rs.1,00,000/-, he is required to pay the Court fee on the enhanced amount.

In the result, the appeal is allowed enhancing the compensation to Rs.1,71,200/- (Rupees one lakh seventy one thousand two hundred only), with interest at the rate of 7.5% per from the date of petition till realization. There shall be no order as to costs. The impugned award of the Tribunal in OP No.608 of 2003 is modified to the extent indicated above. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed. No order as to costs.



JUSTICE A. RAJASHEKER REDDY

16.03.2018
kvs

⁴ 2013 ACJ 1403

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA.No.909 of 2006



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