

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A.NO.1304 OF 2011

JUDGMENT:

Appellant-injured claimant filed this appeal against the order and decree dated 24.03.2003 passed in M.V.O.P.No.507 of 2011 by the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Kurnool, granting total compensation of Rs.70,200/- against the claim of Rs.1,50,000/- for the injuries and disability sustained by the appellant in a motor vehicle accident occurred on 01.12.2000.

The appellant-injured claimant filed claim petition under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.1,50,000/- alleging that on 30.11.2000 when he was driving a lorry bearing No.AP 21 T 6642, left Peapully at about 12.30 a.m. on 01.12.2000 and reached R.T.C. Depot, Guntakal, the offending lorry bearing No.AP 21 T 9468 driven by its driver in a rash and negligent manner with high speed dashed against the claimant's lorry. In the accident, the claimant sustained grievous injuries. At that point of time, he was aged about 25 years, hale and healthy and was earning an amount of Rs.3,000/- per month as a driver of the lorry. On account of the injuries received by him in the said accident, he lost his earning capacity and future income due to permanent disability. He filed the claim petition against the respondents, the owner of the offending lorry and the Insurance Company with whom the offending lorry was insured.

The first respondent-owner of the offending lorry remained *ex parte*.

The second respondent-Insurance Company filed a counter denying all the averments made in the claim petition and specifically contending

that the driver has no valid and effective driving licence to drive the offending lorry. Hence, it was not liable to pay the compensation to the appellant-injured claimant.

Based on the above pleadings, the Tribunal framed the following issues for its consideration:

- 1) 'Whether the accident occurred due to rash or negligent driving of lorry bearing No.AP 21 T 9468 resulting in injuries to the petitioner?
- 2) Whether the petitioner is entitled for compensation, and if so, to what amount from which of the respondents?
- 3) To what relief?

During the course of trial, the appellant-injured claimant examined himself as P.W.1 and got marked Exs.A.1 to A.8. Ex.B.1, a copy of the insurance policy, was marked on behalf of the second respondent-Insurance Company. But, no oral evidence was adduced on its behalf.

The Tribunal considered the evidence of the P.W.1, coupled with Ex.A.1, certified copy of the FIR in Crime No.119 of 2000 on the file of the Guntakal Police Station registered against the driver of the offending vehicle, and Ex.A.3, certified copy of the calendar and judgment in C.C.No.487 of 2000 of the Judicial Magistrate of First Class, Guntakal, wherein the accused-driver of the offending vehicle was found guilty for the offence under Sections 337 and 338 of IPC and sentenced to pay a fine of Rs.300/- and Rs.700/-, respectively, besides that, the accused-driver of the offending vehicle was found guilty for the offence punishable under Section 279 IPC and sentenced to pay a fine of Rs.1,000/- basing on the voluntary admission of his guilt. The Tribunal was of the opinion that when once the driver pleaded guilty voluntarily before the criminal

Court, he could not resile from the admission. It was observed that on behalf of the second respondent-Insurance Company, in the cross-examination, nothing was elicited to disprove the rash and negligent driving of the driver of the offending vehicle. In view of the finding of the criminal Court that the accident was caused due to the rash and negligent driving of the driver of the offending vehicle and based on the oral and documentary evidence, the Tribunal came to the conclusion that the motor accident occurred due to the negligent driving of the driver of the offending vehicle. Issue No.1 was accordingly answered in favour of the appellant-injured claimant. This finding cannot be found fault with in the absence of any evidence to the contrary.

Though the injured claimant contended that he was earning an amount of Rs.3,000/- per month by working as a driver of the tempo lorry, the Tribunal had fixed his annual income at Rs.18,000/-, treating him as an unskilled driver, as he did not produce any documentary evidence in proof thereof. The Tribunal assessed the disability of the appellant-injured claimant at 20% based on the disability certificate issued by the District Medical Board, under Ex.A.5. The Tribunal, having fixed the disability percentage as 20%, granted compensation under head 'loss of future earnings' due to permanent disability, at Rs.61,200/-. In addition to the same, it granted Rs.5,000/- towards 'grievous injury', Rs.1,000/- each to the simple injury, Rs.8,000/- towards compensation for 'pain and suffering' and Rs.1,000/- towards medical expenses, extra nourishment, transportation and other incidental expenses as per the evidence produced by the appellant-injured claimant under Ex.A.4. The Tribunal disbelieved the claim of the appellant-injured claimant though he placed reliance on bunch of medical bills under Ex.A.6 stating that those bills

were not signed by the issuing authority and the corresponding prescriptions were not produced. The Tribunal granted total compensation of Rs.70,200/- with interest at 9% per annum and directed the first respondent, the owner of the offending vehicle, and the second respondent, the Insurance Company, jointly and severally liable to pay the same.

Learned counsel for the appellant-injured claimant would contend that though the appellant-injured claimant stated that he used to earn Rs.3,000/- per month by working as a tempo driver and though there was no evidence to the contrary, the Tribunal had taken Rs.18,000/- only as his annual income, instead of Rs.36,000/-. He would further contend that meagre amount was awarded under the head 'medical expenses'; towards 'pain and suffering' and towards 'loss of future earnings'; though he suffered permanent disability. Therefore, the appellant-injured claimant is seeking enhancement of the compensation.

Having regard to the facts and circumstances of the case, and in the considered view of this Court on perusing the evidence available on record, it is found that the Tribunal ought to have taken the monthly income of the appellant-injured claimant at Rs.3,000/- as he was the driver of the tempo lorry and thereby, his annual income would be arrived at Rs.36,000/-, instead of Rs.18,000/-. The appellant-injured claimant claimed that he was aged 25 years at the time of accident but in Ex.A.2 his age was mentioned as 24 years. As per Ex.A.2, the multiplier '17' could be applied to assess the 'loss of dependency' as per the judgment in SARLA VERMA v. DELHI TRANSPORT CORPORATION¹. As per Ex.A.5, disability certificate, issued by the District Medical Board, the

¹ (2009) 6 SCC 121

Tribunal assessed the disability at 20% towards 'loss of future earnings' due to permanent disability suffered by the appellant-injured claimant and the same is reasonable (NATIONAL INSURANCE CO. LTD. VS. PRANAY SETHI²). He is entitled for Rs.15,000/- towards 'pain and suffering' and Rs.5,000/- towards extra nourishment, transportation and other incidental expenses.

In view of the above, this Court grants an amount of Rs.1,22,400/- towards 'loss of future earnings' ($36,000 \times 17 = 6,12,000 \times 20\% = 1,22,400$). In all, the appellant-injured claimant is entitled to Rs.1,48,400/-, instead of Rs.70,200/-. This Court finds no error in interfering with the order of the Tribunal in the context of interest component, which was allowed @ 9% per annum.

The appeal is accordingly allowed. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

Date:30.10.2018

GJ

M.GANGA RAO,J

² 2017(6) ALD 170 (SC)