

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA.No.891 of 2006

JUDGMENT:

The present appeal is preferred against judgment and decree dated 05.02.2004 in O.P.No.54 of 2003 seeking to enhance the compensation, on the ground that the amount of Rs.30,000/- with interest at 9% per annum granted by the V Addl. Metropolitan Sessions Judge-cum-XVIII Addl.Chief Judge, Hyderabad (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. The brief facts which are necessary for disposal of this appeal are as follows: On 18.11.2002 at about 2.30 p.m, when the petitioner was proceeding on foot on the road of backside of Andhra Bank, I.D.A Balanagar towards main road, a lorry bearing No.ABJ 2724 came in a rash and negligent manner and at high speed and hit the petitioner. As a result of which, petitioner sustained fracture on both bones of left leg, a grievous injury to the left foot and other injuries. Police, Balanagar registered crime No.255/2002 under Section 337 of IPC. The petitioner took treatment for considerable period and spent huge amount for his treatment. Since the petitioner sustained grievous injuries, he took treatment for six months and that he also sustained permanent disability. The 1st respondent is the owner and 2nd respondent is the insurer of the offending vehicle.

3. The first respondent remained *ex parte*. The 2nd respondent filed counter denying all the allegations made in the petition and the liability of the insurance company to pay any compensation.

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

1) Whether the petitioner sustained injuries due to rash and negligent driving of the respondents vehicle by its driver?

2) Whether the petitioner is entitled for compensation, if so, to what amount and from whom?

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 A6 on behalf of the petitioner. The 1st respondent remained *ex parte*. No oral evidence is adduced on behalf of the 2nd respondent, but Ex.B1 was marked by consent. The Tribunal, having analysed the evidence of P.W.2 and the contents of Ex.A5-disability certificate has not granted any amount towards 30% disability suffered by the petitioner, but granted Rs.7,500/- towards loss of income, Rs.6,500/- towards medical expenses, Rs.15,000/- for pain and suffering and Rs.1,000/- towards transportation to the hospital, thus in all, the petitioner was awarded compensation of Rs.30,000/- by the Tribunal.

6. Heard learned counsel for the petitioner and Sri N.Mohana Krishna, 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 vehemently submits that though the petitioner was examined by P.W.2, the Doctor, who treated him soon after the accident gave Ex.A5 disability certificate stating that he sustained 30% disability due to injuries sustained by him. He submits that the Tribunal, having analysed the evidence of the P.W.2, did not believe the version of P.W.2 and not granted any compensation under the head of disability, but only granted Rs.7,500/- towards loss of income. He submits that the petitioner was working as labourer and earning Rs.4,000/- per month, as such, the Tribunal ought to have taken the income of the petitioner as Rs.4,000/- per month, but taken the same as Rs.2,000/- per month.

9. On the other hand, learned Standing Counsel for the 2nd respondent-insurance company submits that the Tribunal has not believed Ex.A5, Disability Certificate issued by P.W.2. He submits that Ex.A2, Discharge Certificate, does not contain anything about disability mentioned in Ex.A5, as such, no interference is called for.

10. In this case, it is to be seen that P.W.2 is the Doctor, who treated the petitioner after the accident deposed that he examined P.W.1 clinically and radiologically and after perusing Ex.A2, Discharge Certificate, he found mal union of left leg bones with 2" shortening besides severe stiffness of left ankle with only five

degrees to ten degrees of movement. In the cross-examination, he admitted that Ex.A2 does not disclose laceration of left foot and mal union are subsequent developments. He opined that the patient with this deformity has to increase the height of the slipper at the affected site to avoid limping. After analyzing the evidence of P.W.2, the Tribunal disbelieved the version of P.W.2 on the ground that when he is giving evidence, P.W.1 was present P.W.2 observed that P.W.1 was wearing normal slippers but not slippers having different heights to suit any deformity. The Tribunal also disbelieved the version of P.W.2 also on the ground that though P.W.2 stated in his chief examination that the petitioner consulted him at his clinic for several times for treatment, which was struck off subsequently, thereby concluded that P.W.1 tried to fabricate the evidence with regard to post discharge treatment to him.

11. It is an admitted fact that due to the accident, petitioner admitted in Gandhi Hospital, Secunderabad on 18.11.2002 and discharged on 30.11.2002. A perusal of Ex.A2 shows that the petitioner sustained a close communicable fracture on both bones in acceptable arraignment and laceration over foot. Ex.A6 is the X-ray obtained on 13.04.2004 at Kalinga Orthopedics and Fracture Centre, and on the basis of Ex.A6, P.W.2 issued Disability Certificate Ex.A5. Normally, the Discharge Summary i.e., Ex.A2 will not contain malunion of bones. It is only at the later point of time, whether the bones have reunited or not will be known. Moreover, in view of nature of injuries sustained by the

petitioner, certainly it takes some time to cure the fractures. Though, P.W.2 examined the petitioner and issued Ex.A5 disability certificate, the same was not challenged by the contested respondent. Non-consideration of evidence of P.W.2 with regard to disability sustained by the petitioner by the Tribunal on the ground that the petitioner wore similar slippers, cannot be accepted. As such, Ex.A5, Disability Certificate can be taken into consideration for calculating the disability sustained by the petitioner.

12. Admittedly, the petitioner is working as a labourer and the Tribunal, by taking into consideration of his deposition as P.W.1 coupled with Ex.A2, held that the petitioner is a skilled labourer. Though the petitioner is claiming that he is earning Rs.4,000/- per month, The Tribunal, having held that the petitioner is a labourer, it took the earnings of the petitioner as Rs.75/- per day and Rs.2,000/- per month, which is erroneous. As I already stated supra, the Tribunal has failed to grant any amount towards loss of income or towards disability sustained by the petitioner. But 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

¹ 2011 (6) ALT 48 (SC)

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 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/-.”

As per the aforesaid judgment, the income of a labourer can be considered as Rs.4,500/- per month. Since the petitioner himself pleaded that he used to earn Rs.4,000/- per month, same can be taken into consideration while calculating loss of income due to 30% disability sustained by him in the accident. In the cause title of the OP filed before the Tribunal, the age of the petitioner was mentioned as 42 years and same is to be taken for calculating loss of income. As per judgment of Hon’ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**², the

² (2009) 6 SCC 121

appropriate multiplier to be applied for arriving for the age of the petitioner is ‘14’ and when the same is applied, it comes to Rs.2,01,600/- (Rs.4,000/- x 12 x 14 x 30%), towards 30% permanent disability. Considering the gravity of injuries, the petitioner might have taken treatment for two months. As such, compensation of Rs.7,500/- granted by the Tribunal towards loss of income during the period of treatment, needs no interference. Since the petitioner sustained grievous fracture injuries, an amount of Rs.20,000/- can be granted towards extra-nourishment and medical expenses, instead of Rs.6,500/- granted by the Tribunal. An amount of Rs.20,000/- towards pain and suffering instead of Rs.15,000/- granted by the Tribunal. Since it is stated that the petitioner took treatment in two hospitals, he might have incurred expenditure towards transportation, as such, Rs.5,000/- towards transportation can be awarded instead of Rs.1,000/- towards transportation. In all, the petitioner is entitled for the compensation under the following heads:

a) Loss of future income	:Rs.2,01,600/-
b) Loss of income during treatment	:Rs. 7,500/-
c) Extra nourishment & Medical expenses	:Rs. 20,000/-
d) Pain and suffering	:Rs. 20,000/-
e) Transportation	:Rs. 5,000/-
Total	:Rs.2,54,100/-

The petitioner claimed Rs.1,00,000/- towards compensation, but as per the Judgment of Hon’ble Supreme Court in **Nagappa**

vs. Gurdayal Singh³ 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.2,54,100/-. So far as the interest is concerned, the Tribunal awarded 9% per annum on Rs.30,000/-, the same is not interfered with, since the claim was adjudicated in 2004, and that too, in the absence of any indication about the same being deviated from the prevailing rate of interest at the relevant point of time. However, the interest on enhanced 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 over and above Rs.1,00,000/- and the Tribunal shall deduct the differential court fee after the amount is deposited by the respondents into the Court.

In the result, the appeal is allowed enhancing the compensation to Rs.2,54,100/- (Rupees two lakhs fifty four

³ 2002 AIR SCW 5348

⁴ 2013 ACJ 1403

thousand one hundred only), with interest at the rate of 9% per annum on the amount of Rs.30,000/- granted by the Tribunal and at 7.5% per annum on the enhanced amount of Rs.2,24,100/- (Rupees two lakhs twenty four thousand one hundred only) from the date of petition till realization. There shall be no order as to costs. The impugned award of the Tribunal in OP No.54 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.

15.03.2018
kvs



JUSTICE A. RAJASHEKER REDDY

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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