

SMT JUSTICE T. RAJANI

MACMA.No.308 of 2012

&

MACMA.No.771 of 2013

COMMON JUDGMENT:

These appeals are preferred by the appellants, who are the respondents and the petitioner-claimant respectively before the Court below, assailing the judgment, dated 27.09.2010, passed by the I Additional Metropolitan Sessions Judge-cum-XV Additional Chief Judge, Hyderabad, in O.P.No.1983 of 2008.

MACMA.No.308 of 2012 is filed on the grounds that the Court below did not consider the negligence on the part of the petitioner and it also erroneously considered the disability as 50%, though there was no certificate issued by the Medical Board.

MACMA.No.771 of 2013 is filed on the grounds that the Court below did not assess the income of the petitioner properly and it took only Rs.4,000/- per month, as against the claim of Rs.20,000/- per month, and also the Court below did not consider the future prospects of the petitioner.

2. Heard the learned counsel for both sides.
3. The facts of the case, briefly, are that on 13.06.2008 at about 12.45 p.m., when the petitioner, along with his friend, was going on foot near BJP Office, Kukatpally, an APSRTC bus bearing No. AP 10 Z

8090 proceeding from Godrej cross roads towards Kukatpally came in a rash and negligent manner and dashed against the petitioner and his friend, due to which the petitioner fell down on the road and sustained crush injury to his right leg and fracture of interior wall of left maxillary sinus and laceration over left eye, apart from other injuries. The petitioner was aged 19 years by the time of accident and he was doing bakery business under the name and style of “M/s. Lakshmi Bakery” situated at Kakatiya Nagar, Hyderabad, and was earning Rs.20,000/- per month.

4. The respondents filed counter denying the averments in the petition and contending that the accident occurred due to negligence on the part of the petitioner.

5. The Court below, after framing appropriate issues, which are as follows:

“1. Whether the accident occurred on 13.08.2008 at about 12-45 pm near BJP Office, Kukatpally, Cyberabad due to rash and negligent driving of APSRTC bus bearing No. AP 10 Z 8090 by its driver?

2. Whether the petitioner is entitled for any compensation? If so, to what amount and from whom?

3. To what relief?”,

examined PWs.1 to 5 and marked Exs.A1 to A14 on behalf of the petitioner. No evidence was adduced on behalf of the respondents.

6. The Court below, after considering the evidence and the material on record, awarded compensation of Rs.7,60,000/- with interest @ 7.5% per annum from the date of petition till the date of deposit or realisation.

7. The counsel for the respondents contends that since the accident occurred while the petitioner was crossing the road, negligence has to be concluded against the petitioner also. But, in the considered opinion of this Court, mere crossing of the road would not amount to negligence, unless it is shown that the petitioner was crossing the road negligently and has contributed to the accident. Moreover, the charge sheet, which is filed after due investigation, is only against the driver of RTC bus.

8. Hence, in view of the above and considering the fact that no rebuttal evidence was placed by the RTC to disprove the negligence, which was spoken to by PW.1, this Court does not see any reason to interfere with the judgment of the Court below with regard to the finding rendered under issue No.1.

9. Coming to the amount of compensation, the Court below did not accept the evidence of PW.3, who assessed the disability at 60%, and it took 50% as the disability, by considering that the disability certificate – Ex.A12 was not issued by the Medical Board.

10. The law is well settled that it is not necessary that a Medical Board has to issue the disability certificate and that if a qualified doctor assesses the disability, then the disability certificate can be accepted.

11. PW.3 seems to be an Orthopaedic Surgeon working in a Government Hospital and he is also incidentally a member of the Medical Board. Unless the disability assessed by such person suffers from any irrationality, the same need not be disbelieved. The contention of the petitioner's counsel is that the disability has to be taken as 100%, but the same cannot be accepted, as the petitioner was doing bakery business, which does not require much travel. The Court below awarded Rs.1,50,000/- towards the cost of artificial leg, with the help of which the petitioner would be able to continue his avocation. However, the disability of the petitioner can be taken as 60%.

12. The income @ Rs.4,000/- per month taken by the Court below also seems to be on lower side.

13. Now, the counsel for the petitioner relies on the judgment of the Apex Court in **RAMACHANDRAPPA v. ROYAL SUNDARAM ALLIANCE INSURANCE CO. LTD.**¹, wherein it was held that the

¹ (2011) 13 SCC 236

income of a coolie has to be taken as Rs.4,500/- per month. Hence, the same can be taken as the monthly income of the petitioner in this case also.

14. The counsel for the petitioner takes the help of the Constitution Bench judgment of the Supreme Court in **NATIONAL INSURANCE CO. LTD. V. PRANAY SETHI** [Special Leave Petition (Civil) No.25590 of 2014 and batch dated 31.10.2017] in support of his contention that 40% has to be considered as the future prospects of the petitioner. Hence, accepting the said contention, the monthly income of the petitioner is taken as Rs.6,300/- {Rs.4,500 + 1,800[Rs.4,500 x 40%=Rs.1,800/-]}. After considering the disability of 60%, the monthly income of the petitioner would come to Rs.3,780/- [Rs.6,300 x 60%] and annual income would come to Rs.45,360/-. The multiplier for the age of the petitioner taken by the Court below is '16', but as per the decision of the Supreme Court in **SARLA VARMA v. DELHI TRANSPORT CORPORATION**², the relevant multiplier for the age of the petitioner is '18'. Hence, the loss of income due to disability would come to Rs.8,16,480/- [Rs.45,360 x 18]. Out of the said amount, Rs.3,84,000/-, which was awarded by the Court below, has to be deducted, then the balance amount would be Rs.4,32,480/- (Rs.8,16,480/- - Rs.3,84,000/-).

² (2009) 6 SCC 121

15. Considering that the petitioner might have been ridden at least for four months, the Court below awarded Rs.16,000/- towards loss of income for the said period of four months by taking the monthly income at Rs.4,000/-. However, as the monthly income of the petitioner is now taken at Rs.4,500/-, the amount under the said head comes to Rs.18,000/-. Out of the said amount, Rs.16,000/-, which was awarded by the Court below under the said head, has to be deducted, then the balance amount would be Rs.2,000/-.

16. The counsel for the petitioner also contends that no amount was awarded towards loss of marital prospects. Since the petitioner is an unmarried person and the amputation to his leg would definitely affect his marital prospects, Rs.2,00,000/- is awarded under the said head.

17. The counsel for the petitioner further contends that the artificial leg has to be changed for every 10 years and the Court below has awarded only Rs.1,50,000/- towards artificial leg. PW.5 testified that the cost of the artificial leg would be Rs.1,50,000/-. He also stated that the leg has to be replaced for every 10 years. Hence, considering the evidence of PW.5, this Court is inclined to award Rs.3,00,000/- towards the cost of artificial legs, in addition to the

amount of Rs.1,50,000/- awarded by the Court below under the said head.

18. Hence, in all, the enhanced compensation would come to Rs.9,34,480/- and the petitioner is entitled to the said amount, in addition to the amount awarded by the Court below. The rest of the award is left uninterfered with. Though the compensation awarded exceeds the claim, now the law is well settled by virtue of the decision of the Supreme Court in **RAJESH v. RAJBIR SINGH**³, wherein it was held that the compensation has to be just and it can exceed the claimed amount. This Court also in **ADAM INDUR MUTEMMA v. RATHOD PEDDITA**⁴ held that the compensation amount can exceed claimed amount, subject to payment of court-fee.

19. Hence, the award of the Court below is modified as indicated above with proportionate costs. The claimant shall pay the differential court-fee. The award shall relate back to the date of decree and the enhanced compensation awarded shall carry interest at the rate specified and from the time indicated in the award by the Court below.

20. To the extent indicated above, MACMA.No.771 of 2013 is partly allowed and MACMA.No.308 of 2012 is dismissed.

³ (2013) 9 SCC 54

⁴ 2015 (4) ALD 585 (LB)

As a sequel, the miscellaneous applications, if any pending,
shall stand closed. There shall be no order as to costs.

August 10, 2018
v v

T. RAJANI, J

