HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

M.A.C.M.A.No.466 of 2012

JUDGMENT:

This appeal is directed against the order dated 31.01.2007 in MV OP No.149 of 2006 on the file of the Chairman, MACT cum VI Additional District Judge, Mahabubabad, wherein, the Tribunal awarded a total compensation of Rs.1,79,740/- but the same was restricted to Rs.1,64,000/- as claimed by the petitioner with interest at 7.5% p.a. from the date of petition, till the date of realization, for the injuries sustained by the petitioner in the motor vehicle accident.

2. The appellants herein are the New India Assurance Company – respondents 2 and 3 in the O.P., the 1st respondent herein is the petitioner in the O.P., and the 2nd respondent herein is the driver cum owner of the auto, the 1st respondent in the original petition. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

3. The case of the petitioner, in brief is that, on 11.12.2004 he went to Mahabubabad for purchasing the food grains and after completion of his work, he boarded the auto bearing No.AP 20 V 7520 of the 1st respondent which was going to his village; at about 3 p.m. when the auto reached Chintapally village, the 1st respondent drove the same in a rash and negligent manner and lost control over the vehicle; the auto turned turtle and the occupants of the auto including the petitioner sustained grievous injuries in the said accident. Immediately he was shifted to Area Hospital, Mahabubabad and from there he was shifted to MGM Hospital, Warangal, where he underwent treatment for one month, he sustained grievous injuries to his right thigh, fracture to his hip joint

and femur and became disabled person; the petitioner was aged 30 years at the time of accident and was earning Rs.3000/- per month by doing labour work; on account of disability, he is unable to do his work; the accident occurred only on account of rash and negligent driving of the driver cum owner of the auto; on a complaint, the police of Seerole PS registered a case in Cr.No.131/2004 against the 1st respondent; the 1st respondent is the owner cum driver of the auto and the respondents 2 and 3 are the insurers of the auto and hence, they are jointly and severally liable to pay the compensation of Rs.1,64,000/- to the petitioner.

4. The 1st respondent in O.P. remained *ex-parte* before the Tribunal. The 2nd and 3rd respondents – insurer filed counter denying the averments in the claim petition and contended that the injuries sustained by the petitioner are not grievous in nature; the claim of the petitioner is excessive and that they are not liable to pay any compensation.

5. Basing on the said pleadings, the Tribunal has framed three issues. During enquiry, the petitioner examined himself as PW.1 and he also examined Dr.R.Koteshwar Rao, Orthopedic Surgeon as PW.2 and Exs.A.1 to A.42 were got marked. The original case sheet of the petitioner was marked as Ex.C.1. On behalf of the insurer, no oral or documentary evidence was adduced.

6. The Tribunal, basing on the evidence of PW.1 coupled with Exs.A.1 FIR, Ex.A.2 charge sheet, Ex.A.3 crime detail form, Ex.A.41 driving license of the first respondent and Ex.A.42 registration certificate, held on issue No.1 that the accident occurred on account of the rash and negligent driving of the 1st respondent; on issue No.2, the

Tribunal assessed that the petitioner is entitled for a total compensation of Rs.1,79,740/- under various heads but restricted the claim to Rs.1,64,000/- as claimed by the petitioner with interest at 7.5% per annum from the date of petition, till the date of realization; and on issue No.3, the Tribunal observed that the respondents 1 to 3 are jointly and severally liable to pay the compensation to the petitioner, as the vehicle of the 1st respondent was insured with the 2nd respondent and the insurance was in force on the date of accident. Aggrieved by the same, the present appeal is filed by the insurers.

7. The appeal against the 2nd respondent was dismissed for non-prosecution, as per the orders of this Court dated 12.09.2011.

8. Heard Mrs. I Maamu Vani, learned counsel for the appellants. None appears for the 1st respondent. Perused the record.

9. Learned counsel for the appellants mainly contended that the Tribunal erred in awarding compensation of Rs.1,64,000/- as claimed by the petitioner, who is an agricultural labourer. She further contends that the loss of earning capacity was not assessed by the doctor and only disability has been assessed at 20% and the Tribunal erred in granting compensation as claimed by the petitioner.

9. Learned counsel for the appellants does not dispute the accident and the contractual liability between them and the insured.

10. With regard to the claim, the petitioner claimed a total compensation of Rs.1,64,000/- under various heads for the injuries and the consequential 20% permanent disability sustained by him due to the road accident. To substantiate 20% permanent disability, the number and nature of the injuries and the consequential treatment underwent

by him, including the medical expenditure, the petitioner examined himself as PW.1 and he also examined PW.2 Dr.R.Koteshwarn Rao, Orthopedic Surgeon of Government MGM Hospital, Warangal and marked Ex.A.5 certified copy of wound certificate, Ex.A.6 X-ray opinion, Ex.A.7 discharge card, Ex.A.8 photo of the petitioner, Exs.10 to A.32 medical bills, Exs.A.33 to A.39 medical prescriptions and Ex.A.40 three X-rays films. The original case sheet of the petitioner was also marked as Ex.C.1 through PW.2.

11. According to PW.2, the petitioner sustained two grievous injuries i.e., fracture of femur, grievous injury and anterior dislocation of right hip joint, grievous injury. He further deposed that nailing was done for fracture and reduction was done for dislocation and the petitioner was advised three months bed rest; there is shortening of 1 cm on right side and there is pain and mild restriction of movements in right hip joint due to which there is a disability of 20% and the same is permanent in nature. Admittedly, the petitioner is an agricultural coolie and due to the disability, he can not do the work which he was doing earlier. Basing on the evidence of PW.2 and the documentary evidence i.e., wound certificate, discharge summary and medical bills and also referring to various judgments of the Hon'ble Supreme Court and other High Courts, the Tribunal has awarded a sum of Rs.20,000/- for the fracture of shaft femur, Rs.15,000/- for anterior dislocation of right hip joint, Rs.4,500/- for multiple abrasions on left knee, elbow and wrist (each @ Rs.1,500/-), Rs.15,000/- for pain and suffering, Rs.7,000/- towards medical expenses, Rs.5,000/- towards extra nourishment, Rs.3,000/- towards transport charges and Rs.10,400/- for loss of earnings during the course of treatment. The Tribunal also took note of loss of earning capacity of the petitioner, who is an unskilled manual labourer,

basing on the guidelines of the Minimum Wages Board, Warangal at Rs.2600/- per month (Rs.2600/- x 20% = Rs.520/- per month x 12 Rs.6,240/- per annum) and by applying the appropriate multiplier of 16, as the petitioner was aged 30 years at the time of accident, awarded a sum of Rs.99,840/- towards loss of earning capacity on account of 20% permanent disability.

12. Though learned counsel for the appellants contended that the disability of the petitioner was not proved, the evidence of PW.2, who is a qualified Orthopedic Surgeon, who treated the petitioner, has categorically stated in his evidence that on account of the two grievous injuries, there is shortening of right leg by 1 cm and he assessed the disability at 20% which is permanent. As the petitioner examined the doctor who treated him in the hospital, it cannot be said that the disability is not proved. Further, the Tribunal has taken the income of the petitioner basing on the guidelines of the Minimum Wages Board, Warangal and so, it cannot be said that the income taken by the Tribunal is on higher side. Though, the Tribunal determined that the petitioner is entitled for a total compensation of Rs.1,79,740/-, but restricted the amount to Rs.1,64,000/-, as claimed by the petitioner, I see no reason to interfere with the same.

13. For the reasons stated above, the appeal is devoid of merit and the same is accordingly dismissed. No order as to costs. Pending miscellaneous petitions, if any, in this appeal, shall stand closed.

KONGARA VIJAYA LAKSHMI, J

Date: 14.09.2018
BSS