

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

MACMA No. 241 OF 2012

Judgment:

Being aggrieved by the order and decree dated 12.04.2007 passed in OP No.614 of 2005 by the Chairman, Motor Accidents Claims Tribunal-cum-I Additional District Judge, Vizianagaram, the appellant – United India Insurance Company Limited preferred the present appeal.

2. The appellant herein is the third respondent, the first respondent is the petitioner and the respondents 2 and 3 are the driver and owner of the Auto respectively before the Tribunal. For the sake of convenience, the parties are hereinafter referred to as they were arrayed before the Tribunal in the Original Petition.

3. The facts of the case in brief are that the petitioner is a resident of Nellimarla village, Vizianagaram district; on 14.06.2005 the petitioner and his friend Rajesh started on a motor cycle to go to Vizianagaram and when they reached near Petrol Bunk, Rajapulova at about 10.15 PM, an Auto bearing registration No.AP 31 X 377 being driven by the first respondent came in opposite direction in a rash and negligent manner at high speed and dashed the motor cycle, as a result of which the petitioner fell down and sustained crush injury to his right leg and other injuries whereas the pillion rider died on the spot. After the accident, the petitioner was shifted to a private Nursing Home, Tagarapuvalasa and subsequently he was admitted in Seven Hills Hospital, Visakhapatnam and he took treatment there. The Station House Officer, Bhogapuram Police Station registered a case in Crime No.70 of 2005 under Sections 338 and 304-A IPC against the driver of the Auto, the first respondent. Hence, the petitioner filed the claim petition under Section 166 of the Motor Vehicles

Act, claiming compensation of Rs.10,00,000/- against the respondents 1 to 3.

4. The second respondent filed counter, which was adopted by the first respondent, denying the averments of the petitioner and stating that the accident did not occur due to rash and negligent driving of the first respondent and since the vehicle was insured with the third respondent - Insurance Company and as the policy was in force, the third respondent - Insurance Company alone is liable to pay the compensation.

5. The third respondent - Insurance Company filed counter denying the age, income and avocation of the petitioner and stating, *inter alia*, that the vehicle is not insured and the petition is bad for non-joinder of owner and insurer of the motor cycle on which the deceased was travelling and the amount claimed by the petitioner is excessive.

6. Based on the above pleadings, the Tribunal framed three issues. On behalf of the petitioner, besides examining him as PW.1 the petitioner examined Dr. I. Satishkumar as PW.2 and one V. Ravikumar as PW.3 and got marked Exs.A1 to A11. On behalf of the respondents, none were examined, but the copy of the policy was marked as Ex.B1.

7. The Tribunal, on appraisal of the entire oral and documentary evidence, held on issue No.1 that the accident took place due to rash and negligent driving of the Auto by the first respondent. On issue No.2, the Tribunal after taking the income of the petitioner at Rs.3,500/- per month and disability at 80% applied the multiplier of '17' for the age of the petitioner 24 years and estimated the loss of earnings at Rs.5,71,200/- (Rs.42,000/- x 17 x 80%). The Tribunal also awarded Rs.25,000/- towards pain and suffering, Rs.1,28,800/- towards medicines, transport to hospital and extra nourishment. Thus, in all, the Tribunal awarded total

compensation of Rs.7,25,000/- against the respondents 1 to 3 directing them to pay the same to the petitioner jointly and severally with interest at 7.5% p.a., from the date of petition till realization. Aggrieved by the same, the Insurance Company filed the present appeal.

8. The instant appeal was dismissed for default against the second respondent – driver of the Auto, as per the orders of this Court, dated 08.09.2011, however, since the second respondent has suffered a decree before the Tribunal, the dismissal order passed against him by this Court is of no consequence in view of the decision of the Division Bench of this Court in Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma¹.

9. Heard learned counsel for the appellant – Insurance Company, learned counsel for the first respondent – claimant and learned counsel for the third respondent – owner of the Auto.

10. The main contention of the learned counsel for the appellant is that since the petitioner is working as an Accountant, the disability will not affect his work and the percentage of permanent disability of the petitioner cannot be assumed to be the percentage of loss of earning capacity and in support of his contention he relied upon the judgment of the Hon'ble Supreme Court reported in Raj Kumar v. Ajay Kumar². He further contends that the compensation amount awarded by the Tribunal is excessive.

11. On the other hand, learned counsel for the first respondent – claimant submits that since the claimant sustained 80% permanent disability in the accident, it will adversely affect his earning capacity due to restriction of movement and his marriage prospects and amenities of life in future. He further submits that since the leg was amputated above

¹ 2001(1) ALD 453 (DB)

² 2011 ACJ 1

the knee, the petitioner requires amount for future medical expenses and artificial limb, but the Tribunal did not award any amount towards the same and the Tribunal also did not award any amount towards loss of earnings during the period of treatment and attendant charges and the multiplier applied by the Tribunal is wrong.

12. Perused the material on record. The Tribunal, based on the evidence of PW.3 and Ex.A10 – salary certificate and Ex.A11 – Central Sales Tax Certificate, taken the income of the petitioner at Rs.3,500/- per month which comes to Rs.42,000/- per annum and the same is accepted. The Tribunal, basing on Ex.A2 – wound certificate, wherein the age of the petitioner was mentioned as 24 years, applied the multiplier 17. But, as per *Sarla Verma v. Delhi Transport Corporation*³, the appropriate multiplier to be applied for the age group of 20 to 25 is '18', but the Tribunal erred in applying the multiplier '17'.

13. Coming to the disability sustained by the petitioner, the evidence of PWs.1 and 2 coupled with Ex.A8 – disability certificate issued by the District Medical Board, Vizianagaram, shows that the right leg of the petitioner was amputated above the knee and the disability is estimated at 80%. It is clear from the evidence of PW.2 that the petitioner cannot walk without limping using an artificial limb and he cannot do routine activities like sitting on floor, running, riding two wheeler, climbing stairs etc. The respondents did not adduce any rebuttal evidence to show that the petitioner has no disability much less the disability assessed by the Medical Board as well as by PW.2. Though the learned counsel for the appellant contends that the disability will not affect his work and the percentage of permanent disability of the petitioner cannot be assumed to

³ (2009) 6 SCC 121

be the percentage of loss of earning capacity, the injury has permanently disabled the petitioner, thereby reducing his enjoyment of life and the full pursuit of all the activities he engaged in prior to the accident. Loss of a limb causes a profusion of distress and the petitioner has to deal with the same for the rest of his life and he might have to deal with discrimination and stigma in society due to the fact that he is an amputee and that his marriage prospects have been greatly diminished because of the amputation of leg above the knee.

14. In Raj Kumar's case (*supra*), relied upon by the learned counsel for the appellant, the Hon'ble Supreme Court observed that the compensation should be awarded for inability to lead a full life, his inability to enjoy those normal amenities etc. in addition to compensation for physical injuries:

"4. The provision of the Motor Vehicles Act, 1988 ('the Act' for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. [See *C.K. Subramonia Iyer v. T. Kunhikuttan Nair*, 1970 ACJ 110 (SC), *R.D. Hattangadi v. Pest*

Control (India) (P) Ltd., 1995 ACJ 366 (SC) and Baker v. Willoughby, 1970 ACJ 259 (HL, England))."

15. In the circumstances, the percentage of disability assessed by the Tribunal at 80% is accepted. As stated supra, the Tribunal applied the wrong multiplier '17' instead of '18'. If the same is applied, the loss of earnings awarded by the Tribunal will have to be enhanced. The Tribunal also awarded Rs.1,28,800/- towards medicines, transport to hospital and extra nourishment and the same needs no interference. Further, since the leg of the petitioner was amputated above the knee, he is entitled for artificial limb and future medical expenses. The Tribunal also did not award any amount towards loss of earnings during the period of treatment and attendant charges. The amount of Rs.25,000/- awarded by the Tribunal towards pain and suffering is also very meager. If the same are awarded, the petitioner would get more compensation than the compensation amount awarded by the Tribunal. But, the petitioner – claimant did not file any appeal or cross-objections for enhancement of compensation awarded by the Tribunal. Hence, I am of the considered view that there are no reasons to interfere with the compensation awarded by the Tribunal. The appeal fails and the same is liable to be dismissed.

16. Accordingly, the MACMA is dismissed. There shall be no order as to costs.

17. As a sequel thereto, the miscellaneous petitions, if any, pending in this appeal shall stand closed.

KONGARA VIJAYA LAKSHMI, J

Date: 12th October 2018
Nsr

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI



Date: 12th October 2018

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