

THE HON'BLE SRI JUSTICE M.GANGA RAO

M.A.C.M.A. No. 1930 OF 2014

JUDGMENT:

Appellant-injured-claimant filed this appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'M.V.Act') aggrieved by the order and decree dated 28.12.2011 passed in O.P.No.580 of 2008 by the Chairman, Motor Accidents Claims Tribunal-cum-District Judge, Anantapur, granting compensation of Rs.8,61,000/- against the claim of Rs.9,60,000/- for the injuries sustained by him in the motor accident occurred on 17.10.2006.

2. The appellant filed claim petition under Sections 140 and 166 of M.V. Act alleging that on 17.10.2006 he went to Bethemcherla village for slabs along with his father. They have loaded slabs in the offending hired lorry and started to Kadiri from Bethemcherla village. At about 11.30 p.m., when the lorry reached downward ghat section near Muddanuru, the driver of the offending lorry drove the vehicle in a rash and negligent manner at high speed, lost control and hit the road side parapet wall. As a result, the appellant received grievous injuries and slabs were also damaged. Immediately, he was shifted to Government Hospital, Jammalamadugu, in Tata Sumo van and from there he was shifted to Kurnool for better treatment. On 18.10.2006, the appellant was shifted to Mythri Multispecialty Hospital at Hyderabad where he was

treated as inpatient till 17.11.2006. Later, he was treated in Government Area Hospital and Desai Thippa Reddy Hospital in Madanapalli, NIMHANS, Bangalore and SVMS, Tirupati as inpatient. He was operated upon for spinal fixation with rods and bone grafting at Mythri Multispeciality Hospital, Hyderabad. He was also operated upon twice in SVMS Hospital, Tirupati. He has no sensory in the lower limbs, he can not walk, sustained permanent disability and completely depending on others for his day to day activities. In respect of the said accident, Muddanur police registered a case in Crime No.117 of 2006 under Sections 337, 338 IPC and investigated into. It was further stated that he was aged 21 years and earning Rs.10,000/- per month by doing business in supply of slabs. Hence, he claimed the compensation of Rs.9,60,000/- towards medical expenses and for the injuries sustained by him in the said accident.

3. The 1st respondent-owner of the offending vehicle remained *ex parte*.

4. The 2nd respondent-Insurance Company filed its counter denying the material allegations in the claim petition and mainly contending that the appellant failed to prove that he was the owner of the goods and traveling in the offending lorry. Since he traveled in the offending lorry as a gratuitous passenger, it is not liable to pay any compensation.

5. Based on the above pleadings, the Tribunal framed the following issues:

- 1) Whether the accident occurred on 17-06-2006 is due to the rash and negligent driving of the driver of the Lorry bearing No.AP-21-T-2334 and caused injuries to the petitioner?
- 2) Whether the petitioner is entitled for compensation and if so to what amount and from which respondent?
- 3) To what relief?

6. During the course of trial, the appellant himself got examined as PW1 and the doctors and witnesses as PWs 2 to 9 and marked Exs.A.1 to A.20 to prove the manner of accident, permanent disability sustained by him and the claim of compensation. On behalf of the 2nd respondent, its officer was examined as RW1 and Exs.B.1 and B.2 were marked.

7. The Tribunal, based on the evidence of PW1 and Ex.A.1 FIR and Ex.A.2 Charge sheet, came to the conclusion that the accident was occurred due to rash and negligent driving of the driver of the offending vehicle.

8. The 2nd respondent-Insurance company has also not seriously disputed the occurrence of the accident and the injuries sustained by the appellant.

9. While granting the compensation, the Tribunal has considered the elaborate evidence available on record and

relied on various decisions of Hon'ble Supreme Court in support of its decision and came to the conclusion that the appellant underwent several operations for a long period apart from physiotherapy for movement of spinal cord. The evidence of doctors PWs 2 to 6 establishes that the appellant underwent several operations to get cured the injuries sustained in the accident. Due to accident, he had suffered paralysis in the lower limbs and got sensory loss. His bladder and bowel were not under control. For stability to improve the neurological deficit, he was treated in outpatient department for post-operative care. The evidence of doctors discloses that he underwent several operations to get cured.

10. As per the evidence of PW6 – Civil Surgeon (Ortho), Government General Hospital, Anantapur, and Ex.A.7 physical disability certificate, he suffered 100% disability due to post traumatic sequale of spinal column. He has paraplegia (total weakness of both lower limbs) with bladder and bowel incontinence present. He needs a wheel chair for life long and also support of medical treatment throughout the life. He needs two attendants for his day to day activities. Nothing was elicited in his cross-examination to doubt the veracity of his evidence.

11. The Tribunal having considered the nature of injuries and treatment and disability suffered, assessed the

permanent disability at 80% and accordingly compensation was assessed.

12. The Tribunal having held that PW1 failed to prove his income as Rs.10,000/- to Rs.12,000/- per month from his business, has taken the notional income of the appellant-claimant as Rs.3,600/- per month and Rs.43,200/- per annum. The Tribunal applied the multiplier '17' as the appellant was in the age group of 26 to 30 years. The Tribunal arrived the loss of future earnings of the appellant at Rs.7,34,400/-. As the disability of appellant was assessed at 80%, the Tribunal granted an amount of Rs.5,87,520/- rounded off to Rs.5,87,000/- towards loss of earnings.

13. The Tribunal also granted Rs.1,59,025.40 ps. towards medical expenses as per Ex.A.8-medical bills, Rs.25,000/- towards future medical expenses, Rs.15,000/- towards transport charges, Rs.25,000/- towards pain and suffering, Rs.25,000/- for loss of marital comfort and Rs.25,000/- towards loss of amenities of life. In all, the Tribunal granted total compensation of Rs.8,61,000/- under various heads with proportionate costs and interest @ 8% per annum. In this appeal, the appellant questions the quantum of compensation awarded by the Tribunal.

14. As seen from the material on record, this Court is of the considered view that the Tribunal has granted just and reasonable compensation towards disability, medical

expenses, future medical expenses, transport expenses, pain and suffering and loss of marital life prospects. However, this Court is of the considered view that the Tribunal has granted very meagre amount of Rs.25,000/- towards loss of amenities of life and attendant charges. In his evidence P.W.6-Doctor has clearly stated that the injured needs wheel chair life long, support of medical treatment throughout life and two attendants for his day to day life. No contra evidence was led by the other side to disbelieve the said evidence of the Doctor. Hence, this Court is of the considered view that instead of awarding Rs.25,000/- towards loss of amenities of life and attendant charges, amounts can be awarded separately under the two heads. Hence, the appellant is granted Rs.25,000/- towards loss of amenities of life. The Hon'ble Supreme Court in ***Kavita vs. Deepak and others***¹ taking the life expectancy of the claimant therein, granted charges @ Rs.2,000/- per month towards attendant charges for a period of 33 years. In view of the same and keeping in view that the appellant was aged 21 years at the time of accident, this Court is of the considered view that a *lump sum* amount of Rs.99,000/- could be awarded to the appellant towards attendant charges. Therefore, the compensation granted by the Tribunal of Rs.8,61,000/- is enhanced to Rs.9,60,000/-. It is needless to say that under Section 171 of M.V. Act, there is no hard and fast rule to grant interest at a particular rate. The Tribunal,

¹ (2012) 8 SCC 604

after considering the evidence on record and circumstances under which the accident occurred and keeping in view the bank rate of interest prevailing at the relevant point of time, has rightly granted interest @ 8% per annum, which needs no interference by this Court.

15. The appeal is accordingly allowed. The respondents shall deposit the entire compensation along with costs and interest to the credit of the O.P. before the Tribunal within a period of two months from the date of receipt of a copy of this order. Amounts already deposited shall be given credit. On such deposit, the appellant-claimant can withdraw the entire amount.

16. Miscellaneous Petitions, if any, pending in this appeal shall stand closed. No order as to costs.

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