

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

M.A.C.M.A.No.234 of 2012

JUDGMENT:

Dissatisfied with the award passed by the Chairman, MACT cum District Judge, Anantapur in O.P.No.478 of 2009 dated 23.07.2011 granting compensation of Rs.2,25,000/- as against the claim of Rs.6,00,000/-, the petitioner therein filed the present appeal, seeking enhancement of the compensation.

2. The appellant herein is the petitioner and the respondent is APSRTC. For the sake of convenience, both the parties are hereinafter referred to as they were arrayed before the Tribunal in the original petition.

3. The injured-petitioner through his next friend-father filed claim petition under Sections 140 and 166 of the Motor Vehicles Act, claiming compensation of Rs.6,00,000/- for the injuries sustained by him in a motor vehicle accident, that took place on 31.12.2008 at 7.30 a.m. near RDT Stadium, Anantapur. The facts, in brief, are that, on 31.12.2008, the injured, who was aged about 17 years and studying Intermediate, boarded one jeep at Suryanagar Bus stop, Anantapur town to go to Lingareddypalli, when the jeep reached RDT Stadium at about 7.30 a.m., the offending APSRTC bus came in the opposite direction in a rash and negligent manner and dashed against the jeep; the petitioner and other passengers in the jeep sustained fractures and multiple injuries, one passenger died on the spot; the petitioner was shifted to Government General Hospital, Anantapur; after taking first aid for about one hour in that hospital, the petitioner was shifted to BGS Global Hospital, Kangeri, Bangalore on the advice of the doctors of the

Government General Hospital, Anantapur, where he took treatment for about three months and both his legs were fractured and operated upon and steel plates and rods have been inserted; he was advised to revisit the hospital for follow up treatment; he has spent nearly Rs.1,80,000/- towards medicines, hospital charges, transportation, food etc. during the course of treatment; the petitioner lost one academic year and finally he has become physically disabled; he is not in a position to walk or sit normally; a case in Cr.No.71 of 2008 was registered by Itikilapalli PS against the driver of the RTC bus and hence, he claimed Rs.6,00,000/- as compensation.

4. The respondent – APSRTC filed counter denying the material allegations of the petition, but did not dispute the accident and the involvement of the offending bus in the accident. But APSRTC contended that at the time of the accident, the jeep was over loaded with nearly 25 passengers and hence, the driver of the jeep lost control and dashed against RTC bus; since the jeep was not covered by insurance, case has been foisted against the driver of the bus for the purpose of getting compensation and the petitioner sustained simple injuries and the claim is excessive.

5. Basing on the said pleadings, the Tribunal has framed three issues. During enquiry, on behalf of petitioner, PWs.1 to 4 were examined and Exs.A.1 to A.10 and Ex.C.1 to C.2 were marked. On behalf of the respondent, the driver of the bus was examined as RW.1 but no documents were marked.

6. The Tribunal, on consideration of the evidence of PW.2 who is injured, coupled with contents of Ex.A.1 FIR and Ex.A.3 charge sheet, recorded a finding on issue No.1 that accident occurred on account of

rash and negligent driving of the driver of the respondent bus; on issue Nos.2 and 3, the Tribunal held that the petitioner is entitled for a total compensation of Rs.2,25,000/- with interest at 8% per annum from the date of petition, till the date of realization.

7. Heard Sri I. Venkata Prasad, learned counsel for the appellant-petitioner and Sri K.V. Subba Reddy, learned standing counsel for the respondent. Perused the record.

8. Learned counsel for the appellant-petitioner contended that the Tribunal erred in granting meager compensation though the petitioner suffered 24% disability as per the evidence of PW.4 doctor, who treated the petitioner. He further contended that the petitioner became disabled at the tender age of 17 years, and the Tribunal failed to consider the said fact while granting compensation and seeks enhancement of the claim.

9. Learned standing counsel for the respondent-APSRTC, on the other hand, contended that the amount awarded by the Tribunal is just and reasonable and needs no interference by this Court.

10. Learned counsel for the respondent-APSRTC does not seriously dispute about the manner of the accident. A perusal of the evidence of PW.2-injured petitioner, coupled with the contents of Ex.A.1 FIR and Ex.A.3 charge sheet, shows that the police registered a case against the driver-RW.1 and was charge sheeted before the criminal court. Though, RW.1-driver deposed that he was driving the bus carefully, his version is not corroborated by the contents of FIR-Ex.A.1. Hence, I am of the opinion that the Tribunal has rightly held that the accident occurred due to rash and negligent driving of the driver of the bus.

11. Learned counsel for the appellant-petitioner contended that though the petitioner examined the doctor as PW.4, who treated and assessed the disability at 24%, the Tribunal erred in taking the disability at 10%. He further contended that on the date of examination of the doctor, he examined PW.2 and assessed the disability at 24% and hence, for assessing the loss of earnings, and the loss of amenities of life, the permanent disability should be taken at 24%.

12. The appellant-injured claimed compensation of Rs.6,00,000/- under various heads for the injuries sustained by him in the accident. According to PW.2, he sustained fractures in the accident and had been treated for about three months at BGS Global Hospital, Bangalore and he has spent huge amounts towards medical expenses and other incidental charges. To prove the gravity of the injuries and the extent of treatment, he examined the doctor, who treated him, as PW.4 and the Assistant General Manager of BGS Global Hospital, as PW.3 to prove that he spent a sum of Rs.1,30,144/- towards medical expenses.

13. PW.4 is the Orthopedic Surgeon in BGS Global Hospital, Bangalore. According to him, the petitioner-PW.2 was admitted in their hospital on 31.12.2008 with history of road accident; he was having injuries at thigh region of both the legs and multiple facial injuries; after admission, he underwent surgical fixation for both bilateral femur fracture under epidural anesthesia on 31.12.2008 and discharged on 05.01.2009; he was advised wheel chair mobilization and bed rest and suggested for regular follow up treatment and accordingly, PW.2 attended for further treatment on 10.01.2009, 10.02.2009, 27.03.2009, 27.05.2009 and 28.11.2009. He further deposed that PW.2 was again admitted in their hospital on 02.06.2010 for implant removal and he along with Dr. Mallinath performed the surgery and removed the implants.

inserted in both the thighs of PW.2 and discharged him on 03.06.2010; PW.2 was advised follow up treatment on 12.06.2010, and that PW.2 has difficulty in climbing stairs, sitting down, squatting, running etc., he requires cosmetic surgery for surgical seers. On the date of evidence, PW.4-doctor examined PW.2 and opined that he has 24% disability in respect of lower limbs. In the cross-examination, Doctor has specifically denied that the injuries sustained by PW.2 are simple in nature and he consistently deposed that PW.2 has got 24% disability in respect of lower limbs.

14. In '*Raj Kumar v. Ajay Kumar*¹', the Hon'ble Supreme Court held as follows:

"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 the 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."

15. The evidence of PW.4 clearly shows that on account of the injuries sustained by the petitioner to his both thighs, he suffered 24% disability. At the time of accident, the petitioner was aged 17 years and was studying intermediate. The Tribunal has taken the income of the injured at Rs.3000/- per month and Rs.36,000/- per annum, as the petitioner was a student at the time of accident and non-earning person

¹ (2011) 1 SCC 343

applied the multiplier as 18. Though PW.4 consistently deposed that PW.2 suffered 24% disability, the Tribunal has taken the disability at 10%. In the facts and circumstances of the case, the Tribunal failed to consider the evidence of PW.4 with regard to disability and I am convinced with the evidence of PW.4-doctor that PW.2-injured suffered disability at 24%. Thus the petitioner is entitled for a sum of Rs.1,55,520/- ($\text{Rs.36,000/-} \times 18 \times 24\%$) towards loss of earnings on account of 24% disability.

16. The Tribunal considering the evidence of PW.3 and Exs.A.4 and A.6, bunch of medical bills issued by the hospital of PW.3, awarded a sum of Rs.1,30,000/- towards medical expenses. As the said bunch of medical bills is supported by the evidence of PW.3, who deposed that the said bills were issued by their hospital in favour of the petitioner during the course of treatment, the amount awarded under this head shall be maintained.

17. The Tribunal awarded a sum of Rs.10,000/- towards attendant charges, Rs.5,000/- towards transportation and another sum of Rs.5,000/- towards special diet. Admittedly, the petitioner is a resident of Anantapur District and he has taken treatment at Bangalore. PW.4 deposed that PW.2 attended the hospital on several occasions for further course of treatment. As the petitioner sustained fractures to his both legs, he must have engaged some vehicle to reach Bangalore and one person must have attended on him during the course of treatment for more than 1½ years at Bangalore and he might have spent some amounts towards transport charges, attendant charges and for extra nourishment. In these circumstances, it is just and reasonable to award a sum of Rs.20,000/- towards attendant charges, Rs.25,000/- towards transport charges and Rs.15,000/- towards special diet etc. The Tribunal basing on

the evidence of PW.4 awarded a sum of Rs.10,000/- towards follow up treatment for the fractures sustained by him under the head of future treatment and expenses. Taking into account the nature of injuries sustained by the petitioner and the evidence of PW.4 that the petitioner needs cosmetic surgery for surgical seers, the amount awarded by the Tribunal towards future treatment is too low and in the circumstances, if a sum of Rs.20,000/- is awarded towards cosmetic surgery/future treatment, it will meet the ends of justice. The Tribunal has not awarded any amount towards pain and suffering. Admittedly, the petitioner sustained fractures to both thighs and has taken prolonged treatment for about 1½ years. In the facts and circumstances, I award a sum of Rs.30,000/- towards pain and suffering, as he sustained fractures to both the legs. Thus, in all the petitioner is entitled for a sum of Rs.3,95,520/- (rupees three lakh, ninety five thousand, five hundred and twenty only) (Rs.1,55,520/- towards loss of earnings, + Rs.1,30,000/- towards medical expenses, + Rs.20,000/- towards attendant charges + Rs.25,000/- towards transport charges + Rs.15,000/- towards extra - nourishment/ special diet + Rs.30,000/- towards pain and suffering + Rs.20,000/- towards cosmetic surgery/future treatment) as compensation with interest at 8%p.a. as awarded by the Tribunal, from the date of petition, till the date of realization.

18. For the reasons stated above, the appeal is allowed to the extent indicated. No order as to costs. Pending miscellaneous petitions, if any, in this appeal, shall stand closed.

KONGARA VIJAYA LAKSHMI, J

Date: 17.12.2018
BSS