

HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.732 of 2010

JUDGMENT:

This appeal is filed by the appellant-claimant aggrieved by the Order and Decree dated 09-07-2009 passed in M.V.O.P.No.27 of 2005 by the Motor Accidents Claims Tribunal-cum- District Judge, Adilabad.

2. Brief facts of the case are that the claimant viz., Pittala Chilakaiah, on the morning of 22-09-2001, along with other colleagues working in M/s.Singareni Collieries Company Limited, near Mandamarri, while traveling in a jeep to attend their duties from their village and when they reached Tollavagu bridge, the bus, belonging to the 1st respondent, coming in opposite direction, was driven in a rash and negligent manner and dashed against the jeep, due to which, the petitioner suffered simple and grievous injuries and it lead to permanent disability in his right leg and right fore arm and consequently he was also removed from service by the company declaring him unfit for service on medical grounds. Hence, he filed the claim petition against the respondent Nos.1 and 2 viz., owner of the bus and the insurer claiming compensation of an amount of Rs.16.00 lakhs.

3. Before the Tribunal, 1st respondent remained *ex parte*. The 2nd respondent filed counter denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

4. After considering the oral and documentary evidence on record, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the bus and accordingly fastened the liability against both the respondents to pay the compensation. It further held that the appellant is entitled to the compensation of Rs.4,76,00/- i.e., Rs.4,05,000/- towards loss of future earnings, Rs.40,000/- towards treatment and other ailments, Rs.10,000/- towards extra nourishment, attendant charges and transportation and Rs.14,000/- towards pain and suffering and also Rs.7,000/- towards amenities. Aggrieved by the same, the appellant-insurer filed this appeal.

5. Heard.

6. Learned counsel for the appellant/claimant contends that compensation awarded by the Tribunal is very meager; that the injuries suffered by the claimant lead to his permanent disability and therefore the compensation awarded under the head of loss of future earnings may be enhanced; that the Tribunal has taken multiplier '13' for the age of 37 years instead of '15'. The claimant also produced relevant material to show the expenses of Rs.67,125/- incurred by him for treatment but the Tribunal reduced that amount and granted only Rs.40,000/-. Hence, the compensation may be enhanced.

7. Learned counsel for the 2nd respondent-insurer contends that the Tribunal cannot grant compensation to the claimant since the appellant filed claim petition claiming compensation on the ground of two principles viz.,

on the principle of 'no fault liability' under Section 140 of the Act and on the principle of 'fault liability' under Section 166 of the Motor Vehicles Act, 1988. Further, the Tribunal has not dealt with the matter in a proper manner and did not appreciate the plea of the 2nd respondent that the driver of the bus had no driving licence at the time of accident and the bus was also not roadworthy and therefore there was breach of conditions of the policy. Therefore, the appeal is liable to be dismissed.

8. As seen from the order of the Tribunal, it is clear that the Tribunal applied wrong multiplier in awarding compensation since as per the decision of the Supreme Court in **Smt. Sarla Varma Vs. Delhi Transport Corporation**¹, for the age of 37 years, the correct multiplier is '15' instead of '13'. Further, the Tribunal came to the conclusion without appreciating the oral and documentary evidence properly and that the Tribunal has not dealt with the matter following the settled principles of law and legal position.

9. Therefore, I am of the considered view that the matter is to be remanded for re-examination and that the Tribunal, after considering the oral and documentary evidence available on record and in the light of the settled principle of law, shall pass appropriate orders.

10. Accordingly, the appeal is allowed setting aside the order and decree passed by the Tribunal and the matter is remanded to the Tribunal for fresh consideration and to pass orders accordingly. However, since the

¹ (2009) 6 S.C.C. 121

matter is of the year 2005, the Tribunal is directed to dispose of the appeal within three months from the date of receipt of a copy of this order. No costs.

11. As a sequel thereto, Miscellaneous Applications, if any, pending in this appeal shall stand disposed of.

JUSTICE T.AMARNATH GOUD

Date: 24-07-2019
kvr

