THE HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

M.A. C.M.A. No.1843 OF 2010

JUDGMENT:

Dissatisfied with the amount of Rs.1,00,000/- granted as compensation by the award and decree dated 15.07.2010, passed in O.P. No.60 of 2007 by the learned Judge, Family Court - cum - Additional District and Sessions Judge, Nalgonda, as against the claim of Rs.1,00,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act') read with Section 140 and Rule 455 of Andhra Pradesh Motor Vehicles Rules, 1989, the appellant - claimant preferred the instant Civil Miscellaneous Appeal seeking enhancement of compensation along with an application seeking to amend the compensation from Rs.1,00,000/- to Rs.6,00,000/-.

2. The appellant herein is the claimant, while respondent Nos.1 and 2, who are owner and insurer of the lorry bearing registration No.AP - 27 - T - 5837, are respondent Nos.1 and 2, respectively, in the original petition before the lower Court. For the sake of convenience, the parties herein are hereinafter referred to as claimant, insured and insurer respectively.

3. The facts, in brief, are that on 16.05.2006 at about 23.00 hours, while the claimant was working as *hamali* in Sri Laxmi Sreenivasa Rice Mill, Venkatadripalem Village of Miryalaguda Mandal, for loading and unloading of rice and paddy bags, suddenly, driver of the lorry bearing No.AP 27 T 5837 applied reverse gear and

drove it in a rash and negligent manner with high speed and ran over claimant's left leg. As a result of which, the claimant sustained fractures and other grievous injuries. A case in Crime No.69 of 2006 was registered for the offence punishable under Section 338 of Indian Penal Code, 1860, against the driver of the lorry. Immediately after the accident, the claimant was shifted to Sri Sai Ortho Care centre, Miryalaguda, where he has undergone surgery and treated as an in-patient for a period of more than one month. His left fourth toe was amputated and steel rods were inserted in his left leg. He underwent lot of pain and suffering during treatment period which cannot be measured monetarily.

(a) Prior to the accident, the claimant was hale and healthy and was a *hamali* by profession and used to earn Rs.4,500/- per month. He was 25 years old at the time of accident. Hence, the claimant claimed a compensation of Rs.1,00,000/- before the trial Court.

4. Respondent No.1, insured, remained *ex parte* before the trial Court.

5. Respondent No.2, insurer, filed counter denying the allegations levelled in the claim petition. It denied the manner in which the accident was described and involvement of the person, who is said to be injured in the accident. It is also denied that the lorry bearing No.AP 27T 5837 was driven by its driver in a rash and negligent manner and at high speed. The age, avocation of the alleged

injured and the injuries sustained by him were also disputed. It is also stated that the amount of compensation claimed by the claimant is highly excessive and, therefore, sought to dismiss the claim.

6. Based on the pleadings of both sides, the trial Court framed the following three issues in order to fix responsibility for the accident.

1. Whether the claimant sustained any injuries due to rash ad negligent driving of the lorry bearing No.AP 27 T 5837?
2. Whether the claimant is entitled to claim compensation, if so, to what amount and from whom? And
3. To what relief?

7. During enquiry, the claimant himself was examined as PW.1 and Dr. Srinivas Raju, M.S. Ortho., was examined as PW.2 and Exs.A-1 to A-5 were marked. On behalf of the insurer, a copy of the insurance policy was marked as Ex.B-1.

8. The trial Court, by relying on the oral evidence of claimant himself as PW.1 and documentary evidence i.e., certified copies of First Information Report, charge sheet and medical certificate, which are Exs.A-1 to A-3 respectively, came to the conclusion that due to rash and negligent driving of the driver of the lorry belonging to the insured, the accident occurred and, accordingly, tendered finding on issue No.1 in favour of the claimant.

9. On issue No.2 regarding quantum of compensation, treating that the claimant was 25 years old at the relevant time and by working

as *hamali,* he was earning Rs.1,000/- per month, and taking Ex.A4 - disability certificate issued by the Medical Board, into consideration, where he was certified that he was suffering 50% partial permanent disability, applying multiplier '17', which is appropriate for the age group of the claimant, arrived at Rs.1,02,000/- (12,000 x 50/100 x 17) towards loss of earnings. Since the claimant claimed Rs.1,00,000/- towards compensation, restricted the award to an extent of Rs.1,00,000/- and accordingly awarded the same to the claimant with interest at the rate of 7.5% per annum from the date of petition till the date of realization fixing liability to pay compensation on respondent Nos.1 and 2 jointly and severally.

10. It is the aforesaid order, which is challenged in the instant appeal by the claimant contending that the trial Court, instead of granting just and reasonable amount towards compensation, granted Rs.1,00,000/- restricting the compensation to the amount claimed for which is unjust and unreasonable.

11. The claimant also filed an application in this appeal through M.A. C.M.A. M.P. No.4882 of 2010 stating that while he was undergoing treatment, he was in depression and in that state of mind, he instructed his counsel to file claim petition, claiming an amount of Rs.1,00,000/-, but, he sustained 50% of permanent disability and spent huge amount of Rs.1,00,000/- for treatment alone apart from heavy loss of earnings. He further states that he could not contact his counsel to amend the claim as he was completely bed ridden and

unable to move. He further states that he was an illiterate and he was not aware of the consequences, as such, there is delay in amending the claim, which is neither intentional nor wanton and, thus, he sought permission to amend the claim from Rs.1,00,000/- to Rs.6,00,000/-. The said amendment application was allowed.

12. Heard the learned counsel for the claimant as well as the learned counsel for the insurer and perused the oral and documentary evidence including the impugned award.

13. Learned counsel for the claimant submits that though the claimant pleaded that he was earning an amount of Rs.4,500/- per month, the trial Court has fixed his earnings at Rs.1,000/- without any basis. In support of his contention, he relied on the decision of the Hon'ble Supreme Court in **Ramachandrappa v. The Manager, Royal Sundaram Aliance Insurance Company Limited[1],** wherein, it was held that an amount of Rs.4,500/- per month can be taken as income of a coolie. But, the trial Court has taken only Rs.1,000/- per month, which is on lower side. He also submits that due to 50% partial permanent disability, the claimant cannot work as *hamali* and, as such, there is loss of future earnings, but, the trial Court has not granted any amount under this head. He further stated that though the claimant suffered fractures and amputation of 4^{th} toe, the trial Court has not granted any amount towards pain and suffering and extra nourishment. He also submitted that no amount was granted by the

[1] **AIR 2011 Supreme Court 2951**

trial Court towards medical expenditure though bills in Ex.A-5 are produced to a tune of Rs.60,500/-.

14. Now the point for consideration is whether the claimant is entitled to enhanced compensation?

15. It is to be seen that the trial Court while calculating the loss of earnings reduced the income of the claimant from Rs.4,500/- to Rs.1,000/- per month. In the decision of the Hon'ble Supreme Court referred supra, relied on by the learned counsel for the claimant, it was held as under:

> "14. In the instant case, it is not in dispute that the appellant was aged about 35 years and was working as a Coolie and was earning Rs.4,500/- per month at the time of accident. This claim is reduced by the Tribunal to a sum of Rs.3,000/- only on the assumption that wages of the labourer during the relevant period viz. in the year 2004, was 100/- per day. This assumption in our view has no basis. Before the Tribunal, though Insurance Company was served, it did not choose to appear before the Court nor did it repudiated the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning a sum of Rs.3,000/- per month. Secondly, the appellant was working as a coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal

> should have accepted the claim of the claimant. We hasten to add that in all cases an in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guess work, which may include the ground realities prevailing at the relevant point of time. In the present case, appellant was working as a Coolie and in and around the date of the accident, the wage of the labourer was between 100/- to 150/- per day or Rs.4,500/- per month. In our view, the claim was honest and bona fide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the appellant from 4,500/- to 3,000/- per month. We, therefore, accept his statement that his monthly earning was '4,500.

16. In the present case, it is not the case of the claimant that he is a Coolie. It is his specific case that he is a '*Hamali'* and earning Rs.4,500/- per month. The partial permanent disability, as per Ex.A-4 - disability certificate issued by the Medical Board, is 50% and the claimant is 25 years old at the relevant time which is undisputed. In view of the aforesaid decision of the Hon'ble Supreme Court, relied on by the learned counsel for the claimant, an amount of Rs.4,500/- per month can be taken as income of the claimant; 50% of the same, comes to Rs.2,250/- per month (Rs.4,500/- x 50/100) which comes to Rs.27,000/- per annum (Rs.2,250/- x 12). When the appropriate

multiplier i.e., ‘17’, which is appropriate to the age group of the claimant as per the decision of the Hon’ble Supreme Court in **Sarla Verma v. Delhi Transport Corporation**[2]**,** is applied, it comes to Rs.4,59,000/- (Rs.27,000/- x 17) towards loss of future earnings and the same is accordingly granted. Ex.A-5, final medical bill, issued by Sai Ortho Care Centre, Miryalaguda, shows that the claimant incurred Rs.60,500/-, but, the trial Court declined to grant any amount under this head without any reasons. Hence, an amount of Rs.60,500/- is granted towards medical expenses. As per the evidence of PW.2 Dr. Srinivas Raju, M.S. (Ortho.), who treated the claimant, the claimant suffered fracture of tibia and fibula (left leg), traumatic amputation of 4th toe and proximol swelling fracture of 4th and 5th toe of left foot, extensive soft tissue injury and non vascular was done which are grievous in nature. In view of the same, an amount of Rs.40,000/- can be granted towards pain and suffering and Rs.40,000/- towards extra nourishment and the same is accordingly granted.

17. Thus, the claimant is entitled to a total compensation of Rs.5,99,500/- (Rupees five lakhs ninety nine thousand five hundred only) as against Rs.1,00,000/- awarded by the trial Court, and the same is accordingly awarded maintaining the rate of interest at 7.5% per annum on the enhanced compensation from the date of petition till realisation. The Tribunal to deduct the deficit Court fee after the respondents deposit the enhanced amount.

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[2] (2009) 6 SCC 121

18. Accordingly, the Civil Miscellaneous Appeal is allowed in part modifying the impugned award passed by the trial Court, by enhancing the compensation as stated supra. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any pending, in this appeal stand closed.

A. RAJASHEKER REDDY, J

Date: 21.02.2019
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