

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.815 OF 2006

JUDGMENT:

This appeal is filed by the appellant-claimant, challenging the Order and Decree dated 02-11-2005 passed in O.P.No.339 of 2003 by the Motor Vehicle Accidents Claims Tribunal-cum-V Additional District Judge (FTC), Ranga Reddy District (for short, the Tribunal).

2. The brief facts of the case are that on 09-12-2002 at about 6.30 A.M., while the appellant was driving the auto rickshaw bearing No.AP28U 7004 from Jeedimetla road to Balanagar and while taking a turn near NASR gate to go to Balanagar, a lorry bearing No.AP28U 5737, came in a rash and negligent manner at high speed and dashed the auto rickshaw. In the said accident, the petitioner sustained injuries to both legs and immediately he was shifted to Gandhi Hospital, Secunderabad, where he was treated as inpatient till 29-01-2003. He filed aforesaid OP against respondent Nos.1 and 2, owner and insurer of the lorry, respectively, seeking compensation of Rs.2,00,000/- for the injuries sustained by him in the said accident.

3. Before the Tribunal, respondent No.1 remained *ex parte*. Respondent No.2 filed counter denying the allegations made in the claim petition *inter alia* contending that the amount of compensation claimed by the petitioner is excessive, exorbitant, imaginary and out of proportion and sought to dismiss the petition.

4. The Tribunal, basing on the pleadings, framed the following issues:

- (i) “Whether the accident took place on 09-12-2002 at 6.30 A.M., near Narsapur Cross Road, Balanagar, on account of rash and negligence of the driver of the lorry bearing No.AP28U-5737, which dashed the auto bearing No.AP28U 7004 ?
- (ii) Whether the petitioner is entitled to claim compensation and if so, for how much amount?
- (iii) To what relief ?”

5. Insofar as issue No.1 is concerned, basing on the evidence of P.W.1, and the contents of the complaint and charge sheet, the Tribunal held that the accident occurred due to the negligent driving of the driver of the lorry. Insofar as issue No.2 is concerned, the Tribunal, taking into consideration the evidence of the doctor-P.W.2 and Ex.A8 disability certificate, awarded a total compensation of Rs.91,900/- i.e., Rs.20,000/- towards compound fracture to both bones of right leg, Rs.10,000/- towards fracture to 4th and 5th ribs on right side of the chest, Rs.5,000/- towards simple injuries, Rs.4,000/- towards medicines, Rs.3,000/- towards attendant charges, Rs.1,000/- towards transport charges, Rs.3,000/- towards extra nourishment and Rs.45,900/- towards future loss of earnings, with interest @ 7.5% per annum. Dissatisfied with the quantum of compensation, the claimant filed the present appeal.

6. Sri Shakeel Ahemd Ansari, learned counsel for the appellant/claimant, submits that though P.W.2, the doctor who

treated the appellant, deposed that he issued Ex.A.8-disability certificate stating that the appellant suffered 40% disability, the Tribunal wrongly had taken into consideration the disability at 15%. Apart from the same, the Tribunal took the income of the deceased at 1,500/- per month, which is meager. He further submitted that the Tribunal has not properly assessed the disability for the purpose of loss of future earning capacity and therefore, he prayed to set aside the order passed by the Tribunal. In support of his arguments, he relied on a decision reported in **RAJ KUMAR V. AJAY KUIMAR¹**.

7. Sri A.V.K.S.Prasad, learned counsel for respondent No.2, submitted that the Tribunal passed a well reasoned order and therefore, sought to dismiss the appeal.

8. For the purpose of assessing disability, the Tribunal took into consideration the evidence of P.W.2, Dr.Y.Surender Rao, who worked as Civil Surgeon/Professor in Gandhi Hospital, Secunderabad during the relevant time, who issued Ex.A8, disability certificate, to the effect that the appellant suffered 40% disability due to fracture to right femur, fracture to both bones of right leg pnemothorax and fracture to 4th and 5th ribs, fracture to superior and inferior pubic ramus, shortening of right leg by 5 cms., and deformity of femure, tibia, and that the petitioner is facing difficulty while driving due to the said disability. The Tribunal observed that the petitioner was admitted in Gandhi

¹ (2011) 1 Suprame Court Cases 343

Hospital on 09-12-2002 and discharged on 29-01-2003 and that after retirement of P.W.2 from service in the month of June, 2005, the petitioner obtained Ex.A8, disability certificate, on 18.07.2005 after a lapse of two and half years of the treatment. The Tribunal further observed that *“the photographs filed by the petitioner shows that the petitioner’s right leg was bandaged and so also on the right side of the chest below the shoulder bone. The petitioner has not filed the X-ray films taken at the time of treatment and even the photographs also do not show any injury near the pelvis or right femur. Evidently, as can be seen from Ex.A4, no operation is conducted. P.W.2 deposed that in the Orthopedic management pin traction was given under local anesthesia and limb was immobilized. Therefore from the evidence of P.Ws.1 and 2, coupled with Exs.A3 and A4, it is proved that the petitioner has sustained closed fracture to both bones of right leg, fracture to 4th and 5th right side ribs, apart from simple injuries vide Ex.A3.”*

11. In **Raj Kumar**’s case (supra), the Apex Court held as follows:

“What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation.

Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should

consider and decide with reference to the evidence: (i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.”

12. A perusal of the record, *prima facie*, this Court is of the opinion that the disability certificate issued by P.W.2 under Ex.A8, showing the disability of the appellant at 40%, is without any basis. The certificate bears more than one hand writing and its correctness is doubtful. It is to be noted that in some cases, disability will have the impact on the future earnings preventing the injured from conducting his business/work and in some cases, it may not have the impact. This would become very crucial for considering the disability aspect for determining the future loss of earnings i.e., future prospects. This Court is of the opinion that the Tribunal did not determine the disability of the appellant as per Kessler's Guidelines or Mc.Brides Scales.

13. Therefore, it is a fit case to remand the matter to the Tribunal for fresh disposal to decide the following issues i.e., (i) whether the petitioner sustained fracture injuries and he underwent operation for the said fractures; (ii) whether Ex.A.8, disability certificate, issued by P.W.2 after two and half years of treatment can be relied

upon; (iii) whether the petitioner suffered the disability, and if so, to what extent and (iii) whether the disability is functional and will have the impact on the future earnings of the injured. The Tribunal is directed to decide the above issues by conducting fresh trial and dispose of the OP., as expeditiously as possible, by giving reasonable opportunity to both sides, in view of the observations made above.

14. Accordingly, the Motor Accident Civil Miscellaneous Appeal is disposed of. Miscellaneous petitions pending, if any, shall stand closed. No costs.

Date: 04.11.2019.
Shr.

T.AMARNATH GOUD, J

