

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

M.A.CMA.No.2314 OF 2005

And

CROSS-OBJECTIONS (SR) No.4679 of 2005

COMMON JUDGMENT:

MACMA.No.2314 of 2005 is filed by the appellant-Insurance Company against the judgment and decree dated 07-06-2005 passed in M.V.O.P.No.150 of 1999 by the Chairman, Motor Accidents Claims Tribunal-cum-Principal District Judge, Khammam (for short "the Tribunal) for granting compensation of Rs.6,86,000/- out of claim of Rs.8,00,000/- with interest @ 9% per annum.

2. The Cross-objections are filed by the claim-petitioner for enhancement of the compensation. The appeal filed by the Insurance Company and cross objections filed by the claim-petitioner has been heard together, since the parties and the subject matter are one and the same.

3. The parties hereinafter will be referred to as they are arrayed before the Tribunal for the sake of convenience.

4. The brief facts of the case are as under:

The claim petitioner was working as General Mazdoor in Civil Department, S.C.Company Limited, Kothagudem.

He was hale and healthy prior to accident. Respondent No.1 was the driver of jeep bearing No.AP 20-T-5202, respondent No.2 was the owner and respondent No.3 was the insurer of the said vehicle involved in the accident. On 13-06-1998 at about 5.30 pm, the claim petitioner and one J.Thirupathi were proceeding on a scooter bearing No.ADL 4290 driven by J.Thirupathi towards 5th incline on personal work and the claim petitioner is a pillion rider and they reached in between Rudrampur bridge and Mayabazar centre on R& B road, one jeep bearing No.AP 20-T-5202 driven by respondent No.1 at high speed in a rash and negligent manner came in opposite direction dashed against the scooter. As a result, the claim petitioner and J.Thirupathi were fell down and received multiple and grievous injuries. The jeep was turned turtle and the person who was on the jeep received injuries. The scooter was completely damaged. The accident took place on account of rash and negligent driving of respondent No.1 resulting into injuries sustained by the claim petitioner. Immediately after the accident, a report was lodged at Kothagudem II Town Police Station and a case in Cr.No.40 of 1998 was registered against respondent No.1. Immediately after the accident, the claim petitioner and J.Thirupathi were

taken to S.C. company main hospital, Kothagudem for treatment. The claim petitioner was in the said hospital as in-patient since 13-06-1998 till the date of filing of OP. During the course of treatment, the Duty Medical Officer found the injuries on the right leg of the claim petitioner and at the junction of middle and lower one third was amputated. The claim-petitioner sustained injuries on right thigh and injuries all over the body and three surgeries were performed on the shaft femur right lower one third. It is also stated that the claim petitioner was working as General Mazdoor in S.C. Company Limited. Due to the accident, the claim petitioner could not able to attend the office and his right leg was amputated. Due to which the claim petitioner was permanently disabled. It is also stated that because of amputation of right leg, the petitioner is not fit for employment in the said company and as a result, he lost earnings and lost future earnings. The claim petitioner could not able to move without any help and do his normal duties.

5. Respondent Nos 1 and 2 remained exparte.
6. Respondent No.3 filed denying the allegations mentioned in the petition and further submitted that one J.Thirupathi who drove the scooter in a rash and

negligent manner and dashed the jeep, was alone responsible for the accident. As such, the Insurance Company is not liable to pay the compensation to the claim petitioner. The driver, owner and insurer of Scooter bearing No.ADL 4290 on which the claim petitioner was sitting as pillion rider are necessary parties to the claim petition. Hence, prayed to dismiss the petition.

7. The Tribunal has taken salary of the claim petitioner at Rs.6,000/- per month and Rs.72,000/- per annum and disability at 50% and since the age of claim petitioner was aged 35 years at that time, by applying '15' multiplier, granted compensation of Rs.5,40,000/- (Rs.72,000 x 50/100 x 15) and rounded off to Rs.5,00,000/-. The Tribunal has also granted Rs.21,000/- towards loss of salary for three and half months, Rs.35,000/- for the injuries suffered by him, Rs.15,000/- towards pain and suffering, mental agony and extra-nourishment and Rs.1,00,000/- towards attendant charges and for future medical expenses and other charges. Thus in all the Tribunal granted an amount of Rs.6,86,000/-(actual calculation comes to Rs.6,71,000/-) towards compensation in favour of the

claim petitioner and against respondents 1 to 3 jointly and severally.

8. In the grounds of appeal raised by the respondent-Insurance Company their claim is for reducing the quantum of compensation and in the cross-objections, the claim petitioner is seeking enhancement of compensation. As such, the only issue that is to be decided in both the appeals is regarding quantum of compensation.

9. Admittedly, as per Ex.A.5 disability certificate issued by the Medical Board, Khammam the claim petitioner suffered disability of 70% and PW.3 the Doctor also stated to the same effect before the Tribunal. But the Tribunal while holding that there is no guarantee that the claim petitioner will be continued in service because of disability, has taken disability at 50% only by taking salary of the claim petitioner at Rs.6,000/- per month. In the present case when the amputation is at knee level, it is not known how the Tribunal could have reduced the disability to 50% which is not correct. Further the Tribunal though applied multiplier i.e. '15' and when compensation comes to Rs.5,40,000/- it has been reduced to Rs.5,00,000/- as the same is being paid in

lumpsum. The said reduction of the compensation by the Tribunal is not correct.

10. Further the Tribunal has granted an amount of Rs.35,000/- towards injuries suffered by him, an amount of Rs.21,000/- towards loss of salary for three and half months, which is not on higher side since the income of the claim petitioner was taken at Rs.6,000/- per month. An amount of Rs.15,000/- was granted towards pain and suffering and extra-nourishment, which is also not on higher side and income of the claim petitioner was also taken on the basis of salary certificate Ex.A.6 and an amount of Rs.1,00,000/- granted towards attendant and for future medical expenses and other charges, which is also not on higher side. As such, the above amounts granted under different heads are confirmed. Learned counsel for the claim petitioner submits that as per the judgment of Apex Court in **Sarla Verma and others v. Delhi Transport Corporation**¹, for the age group of 31 to 35 years the appropriate multiplier is '16'. Since the age of claim petitioner was 35 years by the date of accident, the '16' multiplier has to be adopted instead of '15' as adopted by the Tribunal.

¹ (2009) 6 SCC 121

11. In view of the same, this Court felt that it is just and proper to take the multiplier '16' instead of '15'. Therefore, the claim petitioner is entitled for compensation at Rs.8,06,400/- (Rs.6000/- x 12= Rs.72,000/- x 70/100 x16) besides confirming the amounts granted by the Tribunal i.e. Rs.21,000/- towards loss of salary, Rs.35,000/- towards injuries suffered, Rs.15,000/- towards pain and suffering, mental agony, extra-nourishment etc., and Rs.1,00,000/- granted towards attendant and for future medical expenses and other charges and in all comes to Rs.9,77,400/-.

12. Though the compensation claimed by the claim petitioner before the Tribunal was only for Rs.8,00,000/-, in view of the judgment of the Supreme Court in **Nagappa vs. Gurudayal Singh**², there is no restriction in M.V. Act that the compensation should be awarded only upto the claim made by the claimants. Hence, the compensation awarded by the Tribunal is enhanced to Rs.9,77,400/-.

13. Though the Tribunal has granted interest at 9% per annum, the same is reduced to 7.5% per annum, from

² (2003) 2 SCC 274

the date of petition till realization, as per the judgment of the Apex Court in **Rajesh v. Rajbir Singh**³.

14. Accordingly, the appeal filed by the respondent-Insurance Company is partly allowed to the extent indicated above and the cross-objections filed by the claim petitioner is allowed to the extent indicated above. The Tribunal is directed to deduct the difference of Court fee on the deposit of enhanced amount. No order as to costs. Miscellaneous Petitions, if any, pending in this appeal and cross-objections shall stand closed.

A.RAJASHEKER REDDY,J

05-03-2019
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³ 2013 ACJ 1403 = 2013 (4) ALT 35

