

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA.No. 2687 OF 2005

JUDGMENT:

This appeal is preferred by the petitioner in O.P.No.267 of 2003 on the file of the Chairman, Motor Accident Claims Tribunal-cum-Judge, Family Court, Secunderabad (for short, 'the Tribunal'), dissatisfied with the award dated 20.06.2005 granting a sum of Rs.2,00,000/- towards compensation as against Rs.4,00,000/- claimed under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act').

2. The appellant herein is the claimant/petitioner before the Tribunal, while the respondent Nos.1 and 2, the owner and insurer of the Ambassador Car bearing No.AP 10 U 6288, respectively, are the respondents before the Tribunal.

3. The fact-situation occurring in the instant case is that on 07.08.2003, while the petitioner was proceeding in an ambassador Car bearing No. AP 10 U 6288 from Hyderabad towards Dharmapuri on Rajiv Rahadari, when it reached at the outskirts of Arepally Village, the driver of the car drove the car in a rash and negligent manner with high speed and took a sudden turn, thereby the car dashed to the lorry which was coming from Siddipet. Due to which the petitioner received poly trauma with fracture, dislocation of left hip, fracture of Acetalube hip, fracture of right femur with fracture of left ribs 6,7,8 with concussion, left lung with flail chest

left side, compound commuted fractures of both legs and other injuries all over the body. Immediately after the accident, he was shifted to Government Hospital and after first aid, he was shifted to Gandhi Hospital, Secunderabad. Kuknoorpally Police registered a case in Crime No.70/03. As on the date of accident the petitioner was aged 62 years and used to earn Rs.7,800/- per month. The grievance of the petitioner is that after the accident he is unable to attend to his regular duties due to the injuries and permanent disability sustained by him; and that his family members are also suffering a lot of financial difficulties. Hence, the petitioner claimed compensation of Rs.4,00,000/-.

4. The 1st respondent-owner of the vehicle filed counter denying the allegations made in the petition and contended that the accident took place due to the negligence of the petitioner but not due to negligence of the driver of the 1st respondent. He also contends that if at all any compensation is payable, the same can be recovered from the 2nd respondent as the vehicle was validly insured with respondent No.2.

5. The 2nd respondent-insurer of the vehicle filed counter denying all the allegations in the petition and contended that the accident took place due to the negligence of the petitioner but not due to the negligence of the driver of the respondent No.1. It is also

contended that the crime vehicle was not insured with this respondent as on the date of the accident.

6. Basing on the pleadings, the Tribunal framed three issues which read as follows;

1. Whether the accident has taken place due to rash and negligent driving of the car bearing No.AP 10 U 6288 by its driver?
2. What is the just amount that can be awarded as compensation and against whom?
3. To what relief?

7. During enquiry before the Tribunal, the petitioner himself examined as P.W.1., the Managing Partner of M/s.JFU (Just for you) Vinod Brothers, where the petitioner is working, was examined as PW2 and Dr.P.Chandra Shekhar, Associate Professor (Orthopedic) in NIMS was examined as PW3. On behalf of the petitioner Exs.A1 to A14 were marked. On behalf of the respondents Ex.B1-insurance policy was marked.

8. The Tribunal, basing on the evidence of PW1 and also documentary evidence of Exs.A1-FIR, A2-charge sheet, A3-panchanama and A4-MLC, held that the accident occurred due to rash and negligent driving of the driver of the offending vehicle and accordingly answered Issue No.1 in favour of the petitioner.

9. On issue No.2, regarding quantum of compensation, the Tribunal awarded a sum of Rs.2,00,000/- towards compensation to the petitioner with interest @ 9% p.a. from the date of petition till the date of realization making the respondents 1 and 2 jointly and severally liable to pay the compensation.

10. Dissatisfied with the award of compensation granted by the Tribunal, the petitioner preferred the instant appeal impugning the award seeking for enhancement of compensation with interest there on and costs.

11. Heard Sri N.J.Sunil Kumar, learned counsel for 2nd respondent-insurance company limited.

12. Learned Counsel for the appellant submits that though the claimant suffered fractures, serious injuries, 40% disability and incurred Rs.1,76,000/- towards medical expenses, the tribunal has granted Rs.75,000/- towards medical expenses. He also submits that though PW2-employer of the claimant was examined and Ex.A12-salary certificate was marked to show that the claimant was earning Rs.7,800/- per month, the said aspect was not taken into account. While calculating disability, though PW3-doctor assessed the disability of the claimant as 40%, the Tribunal granted a lump sum amount of Rs.25,000/- towards disability which is meager. Though, an amount of Rs.1,00,000/- is granted towards injuries sustained by

the petitioner, no amount is granted towards pain and suffering, extra nourishment, loss of earnings while taking treatment.

13. On the other hand learned Standing Counsel-insurance company submits that the appellant is aged about 62 years as on the date of accident and he may not contribute much to the family, and as such, the Tribunal has rightly granted just compensation and the same does not require any enhancement.

14. In this case it is to be seen that the evidence of PW3 as well as Ex.A13 goes to show that the petitioner suffered 40% disability, but the Tribunal without considering the said aspect has granted only a sum of Rs.25,000/- towards disability instead of calculating the disability by taking the salary of the appellant. The appellant has also adduced evidence regarding his salary by examining PW2 who is his employer and also marked Ex.A12-salary certificate through him. PW2 also stated that the appellant was terminated because he was unfit for any activity of the employment. But, the Tribunal has not given proper reasons for not believing the said salary certificate. Though the appellant produced medical bills- Ex.A11 showing that he has incurred a sum of Rs.1,76,000/- towards medical expenses, the Tribunal only granted Rs.75,000/- without giving any reasons. Further, the Tribunal has not granted any amount towards pain and suffering for the injuries sustained by the claimant.

15. In view of the above, the award of compensation granted by the Tribunal needs to be enhanced and the appellant is entitled to the following enhancement of compensation.

16. From the Salary Certificate Ex.A12, which is supported by the evidence of PW2 who is the employer of the claimant, the income of the claimant is taken as Rs.7,800/- per month for calculating the amount towards disability, since petitioner is aged 62 years by the time of accident, as per *Sarla Verma and others v. Delhi Transport Corporation and Another (2009) 6 SCC 121*, the relevant multiplier is '7'. Then, the amount towards partial permanent disability worked out to $7,800 \times 12 \times 7$ (multiplier) $\times 40/100 = \text{Rs. } 2,62,080/-$. Thus, the claimant is entitled to Rs.2,62,080/- towards partial permanent disability instead of Rs.25,000/- granted by the Tribunal.

17. Since the Tribunal has not granted any amount towards pain and suffering, extra nourishment, Transportation charges and attendant charges the claimant is entitled to an amount of Rs.80,000/- under these heads (Rs.25,000/-, Rs.25,000/-, Rs.10,000/- and Rs.20,000/- respectively).

18. The amounts towards medical bills and injuries of Rs.1,00,000/- and 75,000/- respectively, granted by the Tribunal are maintained since the same are reasonable.

19. Thus, the total compensation to which the claimant is entitled to is Rs.5,17,080/- (Rs.2,62,080 + Rs.80,000 + Rs.1,00,000 + Rs.75,000)

20. Accordingly, the MACMA is allowed enhancing the compensation from Rs.2,00,000/- to Rs.5,17,080/- (Rupees five lakh seventeen thousand eighty only) with interest at the rate 7.5% on the enhanced amount from the date of petition till realization. The claimants have to pay the deficit Court fee or the Tribunal may deduct the amount required for the purpose of Court fee from the amount awarded to the petitioners after respondents Insurance Company deposits the amount. There shall be no order as to costs.

As a sequel, miscellaneous applications, if any, pending in this appeal shall stand closed.

A.RAJASHEKER REDDY, J

04.04.2019
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