

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA.No.224 OF 2005

JUDGMENT:

This appeal is preferred by the petitioner in O.P.No.1221 of 2001 on the file of the Chairman, Motor Accident Claims Tribunal-cum-VI Additional district Judge (FTC), Nizamabad (for short, 'the Tribunal'), dissatisfied with the award dated 02.09.2004 granting a sum of Rs.32,000/-towards compensation as against Rs.1,00,000/- claimed under Section 166 (1)(a) of the Motor Vehicles Act, 1988 (for short, 'the Act').

2. The appellant herein is the petitioner before the Tribunal, while the respondent Nos.1 and 2 the owner and insurer of the Jeep bearing No.ATJ 7044, respectively, are the respondents before the Tribunal.

3. The fact-situation occurring in the instant case is that on 29.03.2001 at 10.45 p.m. while the petitioner along with others was traveling in a Jeep bearing No.ATJ 7044 from Nandipet to Nizamabad, on the way at Chikli Village Shivar at big bridge, the driver of the jeep drove the same at high speed in rash and negligent manner, as a result the jeep turned turtle and the petitioner sustained fracture of both bones of right leg and injuries on his head and other parts of the body. Immediately, after the accident the petitioner was shifted to Government Headquarters Hospital, Nizamabad where he was treated and incurred expenses to a tune of Rs.30,000/- towards treatment. Prior to the accident the petitioner was hale and healthy and

was earning Rs.8,000/- per month. After the accident he sustained permanent disability and lost his income, as such, he claimed Rs.1,00,000/- towards compensation.

4. Both the respondents filed written statements denying all the allegations of the petition including the accident, injuries of the petitioner, expenditure towards treatment, permanent disability and loss of income of the petitioner. The 1st respondent pleaded that the offending vehicle was insured with R2 and if at all any compensation is payable to the petitioner, the same shall be awarded against R2. He also stated that the driver of the offending vehicle was having valid driving licence at the time of accident and the vehicle was road worthy. The 2nd respondent called the petitioner to prove that at the time of accident, the driver of the jeep was having valid driving licence and the jeep was having valid permit. He further alleged that at the time of accident the driver of the offending vehicle allowed more passengers and as such the driver he could not control the vehicle and so the 2nd respondent is not liable to pay compensation.

5. Basing on the pleadings, the Tribunal framed three issues which reads as follows;

1. Whether the accident has taken place due to rash and negligent driving of the vehicle bearing No.ATJ 7044?

2. Whether the petitioner is entitled for compensation?
If so, to what just amount and from which of the respondents?

3. To what relief?

6. To substantiate its case, the petitioner himself examined as PW1 and one Dr.L.Ramulu as PW2 through Commissioner and marked Exs.A1 to A5. R1 did not produce any evidence whereas R2 reported no evidence.

7. The Tribunal, basing on Exs.A1-FIR, A2-charge sheet and in view of the fact that no rebuttal evidence is produced by the respondents, held that the accident occurred due to rash and negligent driving of the driver of the offending vehicle and according answered Issue No.1 in favour of petitioner.

8. On issue Nos.2 and 3, basing on the oral evidence of PW2 and documentary evidence of Ex.A3-wound certificate issued by PW2 wherein it is stated that the petitioner sustained fracture of both bones of right leg, the Tribunal awarded a sum of Rs.10,000/- towards injuries. Though the petitioner stated that he incurred Rs.30,000/- towards medical expenses, he did not produce any medical bills or prescriptions to prove the same. Taking into consideration of the fractures of both bones of right leg, the Tribunal awarded compensation of Rs.10,000/- for treatment of the said injuries. The petitioner pleaded that he was earning Rs.8,000/- per month by doing paddy business, but the Tribunal has taken Rs.2,000/- per month as earnings of the petitioner and calculated loss of income for six months and

awarded Rs.12,000/-. Though, the petitioner claimed permanent disability and filed Ex.A4-disability certificate issued by PW2, since no X-ray is obtained by PW2 before giving the said certificate and since it is admitted by PW2 there is Medical Board to issue disability certificate, the Tribunal did not award any compensation towards permanent disability.

9. Thus, in total the Tribunal granted Rs.32,000/- towards compensation with interest @ 9% p.a. from the date of petition till the date of realization.

10. With regard to liability, R1 did not produce the driving licence of the driver of the offending vehicle. As such, the Tribunal stated that there is violation of terms and conditions of Ex.A5-policy and in view of the decision of Supreme Court in ***United India Insurance Company Limited v. Lahru and others [2003 (3) ALD 20]***, fixed liability on both the respondents and granted liberty to the 2nd respondent to recover the same from the 1st respondent.

11. 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.

12. Heard both sides.

13. Learned counsel for the appellant submits that no amount is granted to the appellant towards pain and suffering, extra

nourishment. He also submits that the Tribunal wrongly taken the income of the petitioner at Rs.2,000/- per month though he claimed at Rs.8,000/- per month. In support of this contention he relied on the Judgment of Supreme Court in ***Ramachandrappa v. The Manager, Royal Sundaram Alliance Insurance Company Limited (AIR 2011 Supreme Court 2951)*** wherein, the Apex Court held that an amount of Rs.4,500/- per month can be taken as income of a coolie. But, the Tribunal has taken Rs.2,000/- per month which is on lower side. He also submits that the Tribunal granted only Rs.10,000/- for the injuries, which is also on lower side.

14. On the other hand learned Standing Counsel for the 2nd respondent submits that the Tribunal basing on the evidence adduced, granted just compensation and as such no interference is called for.

15. In this case it is to be seen that the Tribunal, basing on Exs.A1-FIR, A2-charge sheet and in view of the fact that no rebuttal evidence is produced by the respondents, held that the accident occurred due to rash and negligent driving of the driver of the offending vehicle and the said finding tendered by the Tribunal, cannot be interfered with, as it is claimants appeal for enhancement of compensation and that no appeal is filed by respondents against the said finding.

16. Now, the short point that arises for consideration is, whether the petitioner is entitled to enhancement of compensation ?

17. It is to be seen that the Tribunal held that there was fracture of both bones of right leg and found that the claimant/appellant was not able to do any work atleast for six months, which goes to show that the injuries sustained by the petitioner are grievous, as such, the amount awarded by the Tribunal of Rs.10,000/- is on lower side, and this Court is of the opinion that an amount of Rs.15,000/- would have been awarded towards said injuries and awarded the same accordingly.

18. Since the petitioner sustained grievous injuries he would have suffered great pain. But, the Tribunal has not granted any amount towards pain and suffering. As such, an amount of Rs.15,000/- can be awarded towards pain and suffering.

19. With regard to income of the petitioner the petitioner relied on the Judgment of Supreme Court in **Ramachandrappa's case (stated supra)** wherein the Apex Court has held as follows;

“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.

20. In the present case it is not the case of the appellant that he is a Coolie, it is his specific case that he is doing paddy business and earning Rs.8,000/- per month. In view of the aforesaid Judgment relied on by the learned counsel for the appellant an amount of Rs.4,500/- per month can be taken as income of the petitioner and thereby the loss of income can be

worked out to Rs.27,000/- for six months (4,500 x 6 months) and the same is granted.

21. Since the Tribunal found that the petitioner was unable to work for six months and since he sustained grievous injuries he would have spend some amount for extra nourishment. As such, an amount of Rs.15,000/- can be awarded towards extra nourishment.

22. The amount of Rs.10,000/- granted towards treatment of injuries by the Tribunal is maintained as the same is reasonable.

23. Thus, in total the petitioner is entitled to a sum of Rs.82,000/- towards compensation.

24. Accordingly, the MACMA is allowed in part enhancing compensation from Rs.32,000/- to Rs.82,000/- as against Rs.32,000/- and the same is accordingly granted. The appellant is entitled to interest on the enhanced compensation of Rs.50,000/- at 7.5% per annum from the date of petition till realization.

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

A.RAJASHEKER REDDY, J

19.02.2019
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