

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

M.A.C.M.A. No.1018 of 2005

JUDGMENT:

Having got dissatisfied with the amount of Rs.55,000/- granted as compensation by the order dated 14-02-2005 in O.P. No.1819 of 2001 on the file of the Chairman, Motor Accidents Claims Tribunal-cum-XXI Additional Chief Judge-cum-Additional Metropolitan Sessions Judge for COC, Hyderabad (for short, 'the Tribunal') as against the claim of Rs.1,50,000/- laid under Section 166 of the Motor Vehicles Act, 1988 (for short, 'the Act'), for the injuries sustained by the appellant-petitioner in a road accident, the instant appeal is preferred under Section 173 of the Act seeking enhancement of compensation.

02. The appellant herein is the petitioner, while respondent Nos.1 and 2 herein, who are the Managing Director of APSRTC and the Depot Manager, Hyderabad Depot-1 respectively, were respondent Nos.1 and 2, respectively, in the original petition.

03. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

04. It is the case of petitioner that on 01-12-2000, while himself and others were proceeding in APSRTC bus bearing No.AP-10/Z-6491 from Shadnagar towards Karkonda village. When the said bus reached at the outskirts of Raikal village, due to rash and negligent

driving of RTC bus by its driver, the RTC bus dashed one stationed Mahendra Mini Lorry loaded with Iron rods from behind. Due to which the rods broken the wind screen of the bus and penetrated into the chest of the petitioner who was standing in the bus. The petitioner suffered chest injury and he was confined to bed rest and spent Rs.40,000/- towards medical expenses. It is the case of the petitioner that by the time of accident, he was working as Manager in Siva Ganga Rice Mills and earning Rs.7,000/- per month. Due to above accident not only himself, but also his family members were put to great hardship and loss. Thus the petitioner filed the claim petition claiming Rs.1,50,000/- for the injuries sustained by him.

05. The respondents filed common counter opposing the claim of the petitioner and contended inter alia that the accident did not occur due to rash and negligence or high speed of respondent- RTC bus.

06. Basing on the evidence of PWs 1 and 2 and Exs.A1 to A15 and Ex.X.1, the Tribunal has held that the accident took place due to rash and negligent driving of RTC bus and by its driver and the petitioner sustained injuries in the said accident.

07. The Tribunal has granted Rs.3,000/- towards loss of earnings, Rs.2,000/- towards transportation charges, Rs.2,000/- towards extra-nourishment, Rs.34,300/- towards medical expenses and Rs.12,000/- towards pain and suffering and in total works out to Rs.53,300/-

rounded off to Rs.55,000/-.Thus in all the petitioner was granted Rs.55,000/-. Against the same the present appeal is preferred.

08. Learned counsel for the appellant submits that though the petitioner was working as Manager in a rice mill and was paid Rs.7,000/- per month and he was hospitalized for six weeks, only Rs.3,000/- was granted towards loss earnings and Rs.12,000/- towards pain and suffering, which is meagre. He also submits that petitioner has incurred Rs.40,000/- towards medical expenses and he also produced the medical bills under Ex.A.11, but the Tribunal has granted an amount of Rs.34,300/- towards medical expenses. He also submits that no amount was granted by the Tribunal towards disability.

09. Sri N.Vasudeva Reddy, Learned Standing Counsel submits that no evidence was produced by the petitioner regarding loss of income, as such the Tribunal has rightly granted the amount and since there is no disability and no evidence was produced, the appellant is not entitled for amount towards disability. As such, sought for dismissal of the appeal.

10. In this case, since it is claimant appeal filed for enhancement of compensation, the only issue that is required to be considered is whether the compensation granted by the Tribunal requires to be enhanced or not, as the other issues were held in favour of the appellant.

11. The appellant examined PW.2, Doctor who stated that the petitioner sustained penetrating injury on the left side of the chest. He also found the following injuries:

1. Laceration of 8 x 3 x 2 cms on the left side in the front side of the chest.
2. Another laceration of 4 x 1 x 3 cms just above injury No.1.

PW.2 also stated that there was evidence of fracture of two ribs i.e. 2nd and 3rd in the same area. He further stated that he has put inter coastal drain on left side for the purpose of draining collected blood inside the chest on left side. He has sutured injury and arrested bleeding. Later claimant left on medical advise on 2-12-2000 for further treatment in some other hospital. He also stated that petitioner has to take rest of minimum 3 to 4 weeks and the nature of injury is grievous. He also stated that normally the injury of said type might be cured within six weeks. PW.2 in his cross-examination stated that both injuries referred by him forms part of single injury. He also stated in the cross-examination that claimant sustained laceration injury on left side in front of the chest and said injury is grievous injury. Injured require atleast six weeks rest. Admittedly even as per the evidence of PW.2, the appellant is required six weeks rest for curing injury suffered by him. Though the appellant claimed that he is earning Rs.7,000/- per month, the Tribunal has granted only an amount of Rs.3,000/- under the head of loss of earnings for two months period. The Apex Court in *Sri Ramachandrappa vs.*

Manager, Royal Sundaram Alliance Insurance Company Limited¹

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 and 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.

12. In the present case, it is not the case of the petitioner that he was a Coolie. It is his specific case that the petitioner was earning

¹ 2011 (6) ALT 48 (SC)

Rs.7,000/- per month by working as Manager in a rice mill. Hence, it is just and proper to take his salary at Rs.5000/- per month and for two months loss of earnings, Rs.10,000/- can be granted. With regard to medical expenses, the Tribunal by relying on medical bills Ex.A.11 has rightly granted Rs.34,300/-. As such, the same is confirmed. The Tribunal has granted an amount of Rs.12,000/- towards pain and suffering. This Court feels it is on lower side as the petitioner suffered fracture to ribs and the same can be enhanced to Rs.20,000/-. No amount was granted to fracture injuries suffered by the petitioner. An amount of Rs.15,000/- can be granted towards fractures.

13. Thus, the petitioner is entitled to a total sum of Rs.79,300/- as against Rs.48,750/- granted by the Tribunal, towards compensation and the same is accordingly granted. So far as the interest is concerned, the Tribunal granted interest at 9% per annum and the same is maintained on the amount granted by the Tribunal, but on the enhanced amount, interest at 7.5% per annum is granted from the date of petition till realisation as per the decision of the Hon'ble Apex Court in **Rajesh and others v. Rajbir Singh and others**².

14. Accordingly, the instant appeal is partly allowed modifying the order passed by the Tribunal, by enhancing the compensation, as indicated above, and confirming the same in all other respects. There shall be no order as to costs.

² 2013 ACJ 1403

15. As a sequel thereto, miscellaneous applications, if any pending in the instant appeal, stand disposed of.

03-04-2019
Nvl

A.RAJASHEKER REDDY, J

