

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

MACMA No.1486 of 2010

ORDER:

This appeal is preferred by the petitioner in O.P.No.1129 of 2008 on the file of the VII Addl.Metropolitan Sessions Judge-cum-XXI Addl.Chief Judge, Hyderabad, dissatisfied with the award dated 19.04.2010 granting a sum of Rs.2,35,778.71 ps. towards compensation as against Rs.10,00,000/- claimed by the petitioner under Section 166 of M.V.Act, 1988 and Rule 455 of A.P.M.V.Rules, 1989, r/w.Section 163-A & 140 of M.V.Act (for short, 'the Act').

2. The appellant herein is the claimant, while respondent Nos.1 and 2, who are owner and insurer, respectively, of the lorry bearing No.AP 28U 2655 that involved in the accident, are respondent Nos.1 and 2, respectively, in the O.P. before the Tribunal.

3. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the Tribunal.

4. The facts, in brief, are that on 10-04-2008, at about 08.00 a.m., when the petitioner was going on his motorcycle bearing No.AP 12F 8032 from Hasannagar to Aramgarh, when he reached Saraca Plaza, a lorry bearing No.AP 28U 2655 took 'U' turn and dashed to the motorcycle of the petitioner, due to which the petitioner fell down from the bike and

sustained skull fracture and head injury. Immediately he was shifted to Relief Hospital and later to Care Hospital. Police Rajendranagar registered a case in Crime No.388 of 2008 under Section 337 IPC and later altered to 338 IPC against the driver of the lorry. As on the date of the accident the petitioner was aged 22 years and was hale and healthy. He used to impart part time tuitions and earn Rs.5,000/- per month. Due to fracture injuries and other grievous injuries to the skull, he confined to bed with permanent disability and spent huge amounts towards medical expenses. As such he claimed Rs.10,00,000/- towards compensation.

5. The 1st respondent is the owner and 2nd respondent is the insurer of the offending vehicle.

6. The 1st respondent set exparte and the 2nd respondent filed counter denying the averments in the petition and called for strict proof of the facts mentioned in the petition. He also contended that as the accident was a head on collision between the two vehicles, the petitioner equally contributed to the cause of accident.

7. The Tribunal framed the following issues:

“1. Whether the petitioner sustained injuries in the accident on 10.04.2008 due to rash and negligent driving of the driver of the lorry bearing No.AP 28 U 2655?

2. Whether the petitioner was entitled to any compensation? If so, from whom?

3. To what relief ?”

8. During enquiry, on behalf of the claimant, he himself examined as PW1 and also examined PW2 and PW3 and marked Exs.A1 to A15. On behalf of respondents, no witnesses were examined, however, Ex.B-1, copy of the insurance policy was marked.

9. Though respondent No.2 contended that the accident was due to the contributory negligence of the petitioner, but failed to adduce any evidence in support of his contention. Thus, basing on the evidence of PW1 coupled with documentary evidence, Exs.A1 to A3 the Tribunal held that the accident occurred due to rash and negligent driving by the driver of the offending lorry.

10. On issue No.2, the Tribunal held that though the petitioner stated that he sustained permanent disability and claimed compensation, no evidence was adduced by him in proof of the same; and that though, PW2-Ameer Basha, Consultant Neuro Surgeon in Care Hospital, Nampally, was examined, he had not stated anything about the petitioner sustaining any permanent disability. Hence the Tribunal has not granted to the petitioner under the head permanent disability.

11. The Tribunal granted Rs.60,000/- towards pain and suffering and Rs.1,08,778.71 ps. towards medical expenses basing on the evidence of PW2 and PW3 and Exs.A6, A7 and

A10. An amount of Rs.60,000/-, 2,000/- and 5,000/- was granted by the Tribunal towards future medical expenses, extra nourishment and transportation to hospital, respectively. Thus, in all the Tribunal granted Rs.2,35,778.71 to the petitioner making liable respondent Nos.1 and 2 jointly and severally with interest @ 6% p.a. from the date of petition till the date of deposit of the amount into the Court.

12. 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.

13. Heard both sides.

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

15. Learned counsel for the appellant submits that the petitioner requires an amount of Rs.3,000/- per month towards future medical expenses for a period of five years, inspite of the same, the Tribunal granted only Rs.1,000/- per month towards future medical expenses for a period of five years i.e. 60,000/-and that no amount was granted towards loss of amenities and loss of income.

16. On the other hand learned counsel for respondents submits that as no evidence is let in by the claimant to show that he requires an amount of Rs.3,000/- towards future medical expenses, the Tribunal has rightly taken Rs.1,000/- per month as future medical expenses. He also submits that no evidence is produced to show that petitioner suffered any loss of income.

17. In this case it is to be seen that since it is a claimant's appeal, and already there is a finding regarding rash and negligent driving of the driver of the lorry, the only aspect that has to be examined is regarding quantum of compensation.

18. Before the trial Court, PW2-Doctor deposed that the petitioner suffered damage to his brain and he was operated and there is likelihood of petitioner suffering from fits and petitioner/appellant requires Rs.3,000/- per month for medical expenses for a period of five years. The petitioner also relied on the Judgment of this Court in **A.Bal Reddy v. M.S.Prasad and others [2006 (6) ALT 731]** wherein the claimant in that case was awarded Rs.3,000/- per month towards future medical expenses. But, in the present case the Tribunal granted an amount of Rs.1,000/- per month for a period of five years i.e. Rs.60,000/-. There is no reason to disbelieve the evidence of PW2-doctor. In view of the same, and relying on the above said Judgment, this Court is of the opinion that the appellant can be granted Rs.2,000/- per

month towards further medical expenses for a period of five years. As such, he is entitled for a sum of Rs.1,20,000/- (2,000 x 12 x 5) instead of Rs.60,000/- granted by the Tribunal towards future medical expenses.

19. No amount was granted towards loss of amenities by the Tribunal. Since it is stated by PW2-Doctor, that the petitioner's brain has been damaged and there is a likelihood of petitioner suffering from fits, an amount of Rs.50,000/- can be awarded to the appellant towards loss of amenities of life.

20. The Tribunal has not granted any amount towards loss of income during treatment. The petitioner pleaded that he was earning Rs.5,000/- per month by imparting tuitions apart from prosecuting his studies and claimed loss of income during treatment. But the Tribunal has not granted amount stating that no evidence was adduced by the petitioner in proof his income.

21. The Tribunal by taking guidance from second schedule appended to M.V.Act, calculated the earnings of the petitioner, notionally at Rs.15,000/- p.a., as petitioner has not produced any evidence to show that he was a student and earning Rs.5,000/- per month by taking tuitions.

22. But, the learned counsel for the appellant submits that the Apex Court in a catena of decisions has stated that even for a 'coolie' the monthly income has to be taken at Rs.4,500/-. In support of this contention learned counsel relied on the Judgment in **Ramachandrappa v. Royal Sundaram Alliance Insurance Co.Ltd. reported in (2011)**

13 SCC 236 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 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.

23. In the present case it is not the case of the appellant that he is a Coolie, and it is his specific case that he is taking part time tuitions to the tenth class students apart from prosecuting his studies and earning Rs.5,000/- per month. In view of the aforesaid Judgment, the income of the appellant can be taken at Rs.4,500/- per month.

24. Since petitioner underwent operation for head injury, atleast he would have been hospitalized for a period of three months. Hence, and an amount of Rs.13,500/- (4,500 x 3) can be awarded to the appellant towards loss income during treatment period.

25. Thus, in total the appellant is entitled to an amount of Rs.1,23,500/- in addition to the compensation awarded by the Tribunal.

27. Accordingly, the MACMA is partly allowed enhancing compensation awarded by the Tribunal from Rs.2,35,778.71 to Rs.3,59,278.71 Ps. and the same is accordingly granted. The appellant is entitled to interest on the enhanced compensation of Rs.1,23,500/- at 7.5% per annum from the date of petition till realization.

As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.

15.02.2019
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A.RAJASHEKER REDDY, J

