

THE HON'BLE SRI JUSTICE N.TUKARAMJI

M.A.C.M.A.No.643 OF 2012

JUDGMENT:

Heard the learned counsel for the appellant Sri A.V.K.S.Prasad and the learned counsel for the respondents/APSRTC Sri C.Sunil Kumar Reddy.

2. In this appeal, the claim petitioner (hereinafter 'the petitioner') seeks for enhancement of compensation awarded in the decree and order dated 28.09.2011 in O.P.No.1552 of 2009 on the file of Chairman, Motor Accident Claims Tribunal-cum-Chief Judge, City Civil Court, Hyderabad.

3. The petitioner's case in brief is that on 27.05.2009, while he was boarding the APSRTC bus bearing registration No.AP10Z 4951 (for short 'the bus') from the front door at Karmanghat bus stop, the driver of the bus moved the vehicle in a rash and negligent manner, with that, he fell down and rear tyres of the bus ran over his left leg. Immediately, he was shifted to Osmania General Hospital and during

the treatment, his left lower limb was amputated above knee. Thus, claiming permanent disability and other expenditure, filed claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the M.V. Act') seeking compensation of Rs.10,00,000/-.

4. The Tribunal on analyzing the evidence on record, recorded finding that though the driver of the bus was negligent, there was contributory negligence on the part of the petitioner as he was in drunken condition at the relevant hour and apportioned the liability in the ratio of 75:25 and awarded compensation of Rs.3,12,600/- with interest at 6% per annum.

5. The learned counsel for the petitioner would contend that the Tribunal erred in disbelieving the claimed income at Rs.4,000/- per month and future prospects has not been accounted in assessing the compensation. Further, no amounts were granted for the loss of income during the period of treatment, loss of amenities and attendant charges and scant amounts were granted under the head transportation charges. Thus prayed for reassessment and to grant just compensation.

6. The learned counsel for the respondents/APSRTC (hereinafter 'the respondent') would submit that the petitioner has not filed any document to prove the income, thus the Tribunal had rightly fixed the income at Rs.3,000/- per month. Further, the petitioner had undergone treatment in Government Hospital and the contributory negligence apportioned by the Tribunal is reasonable, therefore, the amounts awarded under different heads are judicious and the petitioners could not made out any tenable ground to interfere with the awarded amounts. Hence, prayed for dismissal of the appeal.

7. Under these rival pleadings, the point that arises for determination is:

Whether the compensation amount granted by the Tribunal is just and proper ?

8. At the outset, the Tribunal having regard to the negligence of the petitioner in boarding the bus in intoxicated state, which is substantiated by the MLC report, determined 25% as contributory negligence. In all fairness, the learned counsel for the petitioner submitted that, the petitioner is not contesting this conclusion. Thus, the finding of the tribunal on this aspect and in effect, the

apportionment of liability between the petitioner and respondents at 25:75 is affirmed.

9. The undisputed facts are that, in the accident, the petitioner had suffered injuries and during the medical treatment the left lower limb above knee has been amputated.

10. Though, no document is filed to prove the age of the deceased, the Tribunal has deduced the age basing on the entries in MLC record and discharge card/Exs.A4 and A5 as 25 years and this course is found reasonable.

11. The petitioner pleaded that he was earning Rs.4,000/- per month as contract labourer. The occupation is being part of unorganized sector, no documentary proof can be expected. However, considering the manual wages at the relevant period, the claimed monthly income of Rs.4,000/- is found acceptable and accordingly, the conclusion of the Tribunal on this aspect is modified.

12. The petitioner has not filed any document to show the medical expenditure. However, considering the nature of injuries and the inpatient treatment for about 42 days and amputation of lower limb,

granting Rs.20,000/- towards incidental medical expenditure including extra nourishment is found appropriate.

13. Further, taking into account the period of inpatient treatment and possible bed rest after amputation, the injured would not be in a position to attend his work at least for a period of three months. Thus, granting Rs.12,000/- towards loss of income during the period of treatment is found proper.

14. The petitioner also claimed that he lost earning capacity on account of permanent disability. The treating doctor as P.W.2 has deposed about the amputation and in Ex.A6/disability certificate, the disability had been rated at 60%. Though the disability is referred to the particular limb, having regard to the pleaded occupational activity, equal effect on the earning capacity i.e., at 60% can be reasonably accepted. Thus, the conclusion of the Tribunal on this aspect is affirmed.

15. The Hon'ble Apex Court in ***United India Insurance Company Limited Vs. Pappu Deo Yadav***¹ held that future

¹ 2018 SCC OnLine Del 11348

prospects as contemplated in ***National Insurance Company Ltd. vs. Pranay Sethi and others***² shall be applicable for assessment of compensation for the permanent disability. Thus, considering the age of the petitioner, 40% of income has to be added towards future prospects. In effect, the loss of annual income due to disability at 60% comes to Rs.40,320/-. This amount if multiplied with the relevant multiplier to the age of the petitioner i.e., 18, it would come to Rs.7,25,760/-. The petitioner is entitled to this amount for loss of future income due to the disability.

16. The amputation of left leg will have its impact in enjoyment of future life, hence, granting Rs.20,000/- towards loss of amenities is found proper. Though the petitioner would not have specifically engaged the services of an attendant, the family members would have attended him during the period of treatment, thence awarding Rs.10,000/- towards attendant charges and Rs.5,000/- towards transportation charges is found appropriate. The Tribunal had awarded Rs.25,000/- towards pain and suffering, which is found rational and hence, the same is accepted.

² (2017) 16 SCC 860

17. Thus on reassessment, the total amount that can be awarded to the petitioner is as under:-

Description	Amount (Rs.)
Pain and suffering	25,000.00
Medical expenses and extra nourishment	20,000.00
Loss of income during the period of treatment	12,000.00
Loss of income due to disability	7,25,760.00
Loss of future amenities	20,000.00
Attendant charges	10,000.00
Transportation charges	5,000.00
Total	8,17,760.00

After apportionment of the liability of 25%, the petitioner would be entitled to Rs.6,13,320/-.

18. Accordingly, the appeal is allowed in part in the following terms:

- (i) the petitioner is awarded Rs.6,13,320/- (Rupees six lakhs, thirteen thousand, three hundred and twenty only) with interest @ 7.5% per annum from the date of petition till the date of realization with proportionate interest and costs;
 - (ii) the respondents are directed to deposit the awarded amount within one month from the date of receipt of a copy of this judgment;
- and

(iii) on such deposit, the petitioner is permitted to withdraw the entire amount.

As a sequel, miscellaneous petitioners, pending if any, shal stand closed.

N.TUKARAMJI, J

Date: 23.09.2022.
Shr.