

THE HONOURABLE SRI JUSTICE N. TUKARAMJI

M.A.C.M.A.No. 1492 of 2011

JUDGMENT:

Heard Sri N. Praveen Reddy, Standing counsel for TSRTC and Sri Ch. Janardhan Reddy, learned counsel for the respondent.

2. This appeal has been filed by the respondent/APSRTC against the decree and judgment dated 02.05.2011 in O.P.No.27 of 2009 on the file of Chairman, Motor Accidents Claims Tribunal – cum – IX Addl. Dist. & Sessions Judge at Kamareddy.

3. The petitioner's case in brief is that, on 06.02.2007, while he was walking towards Annapura Mess on Prakasham Road, Governerpet, Vijayawada at about 7:30 PM, one APSRTC bus bearing No.AP-9-Z-4661(for short, 'the bus') driven by its driver in rash and negligent manner, struck him and caused multiple injuries all over his body including crush injury on his left leg and fracture on the right knee. Thus, after the medical treatment, filed Claim Petition seeking compensation of

Rs.2,00,000/- towards medical expenses, loss of income and income earning capacity due to injuries.

4. The Tribunal after analyzing the materials placed by the petitioner concluded that the accident was caused due to rash and negligent driving of the driver of the bus and awarded Rs.1,63,900/- with 7.5% interest per annum from the date of petition till the date of deposit with proportionate costs against the respondent.

5. Aggrieved thereby the appellant/respondent/APSRTC (hereinafter, 'the respondent') preferred this appeal contending that the Tribunal had failed to consider the contributory negligence on the part of the respondent/claim petitioner (hereinafter, 'the petitioner') in the accident. Further, without there being any material to prove loss of income, the period of treatment was considered as 12 months whereas the injuries would have been healed in 6 months. In addition, the loss of income due to disability had been taken as assessed by the Doctor without any cogent evidence of its effect on the occupation. He also contended that the Tribunal

erroneously dealt with the claim petition under both Sections 166 and 163A of Motor Vehicles Act, 1988 (for short, 'the M.V.Act') which is not permissible under law. Thus, prayed for reconsidering the liability and compensation.

6. On the other hand, the learned counsel for the petitioner pleaded that though the appellant claimed contributory negligence, no circumstance is made out or material was placed for consideration. Further, having regard to the injuries the Tribunal had properly considered that the probable period of treatment and loss of income. As the petitioner is driver, the injuries and physical disability of his left lower limb certainly affects his occupational activity. As there is continuance of disability, the compensation granted by the Tribunal is appropriate and thus no tenable ground is made out by the respondent to interfere with the impugned order.

7. In this position, the point that arises for determination is:

"Whether the appellant/respondent is able to establish the contributory negligence of the respondent/claim petitioner and whether the awarded quantum of compensation requires any interference?"

8. The foremost objection of the respondent is that there was contributory negligence on the part of the deceased in the accident. It is settled proposition that the contributory negligence is the fact to be proved by establishing the act or action contributed for the accident which can be described as negligence. In this regard, except the plea, no other material is referred to substantiate the same. As per the petitioner's claim, while he was on foot the accident occurred. Therefore, mere contention that the petitioner had not followed the traffic regulation cannot be held as sufficient to conclude contributory negligence of the petitioner for the accident. Thus, no merit is found in this contention.

9. With regard to the quantum of compensation, the petitioner as PW1 deposed that in the accident he has sustained fracture crush injury on left leg, fracture injuries on right knee and also injuries on his head, neck, ribs, back, leg and other parts of the body. Immediately, he was taken for treatment to the Government hospital. Though the wound certificate/Ex.A3 referred to lacerated wound-left knee (5x5x1 cm) as simple injury, the discharge summary card/Ex.A4 is

indicating that the petitioner suffered degloving injury on his left knee and referred to plastic surgery department of the Hospital for further treatment.

10. The evidence of PW2, who is doctor, discloses that the petitioner was operated in Gandhi Hospital by the Plastic Surgeon and on his examination he found united fracture of fibula right soft tibia of left knee and assessed 40% permanent disability. The entries in the discharge summary are corroborating this version. To note, the respondent has not disputed the facts of accident and the petitioner pleaded injuries. For these reasons, the petitioner suffering the injuries in the accident, as stated by the Doctor can be believed.

11. Admittedly, the petitioner had undergone treatment in Government hospital, however claimed Rs.50,000/- towards medical and other incidental charges but filed Ex.A6/medical bills showing Rs.2,679/- only. After considering these bills, the Tribunal has awarded Rs.2,700/-. As there is no other acceptable point, the conclusion of the Tribunal is affirmed.

12. The Tribunal by recording that crush injury and on the left lower limb and fracture on the right knee held that it will take 12 months to recover. It is neither supported by the Doctor or any other medical evidence much less any pleading. However, as the fracture injuries on the lower limbs in all probabilities two months of bed rest after the treatment can safely be presumed, thus awarding three months of income towards compensation for loss of income during the period of treatment is found appropriate.

13. The petitioner claimed the age at 45 years and was earning Rs.6,000/- per month towards salary and batta for Rs.100/- per day as driver. However, no particulars of the employers or vehicle were at least pleaded. The Tribunal on considering these aspects and the existing daily wages had notionally taken Rs.100/- per day and Rs.3,000/- per month. In absence of any material deducing the probable income basing on the information available is found appropriate, hence this conclusion of the Tribunal is endorsed.

14. The petitioner pleaded that the injuries resulted in physical disability in turn effected his income earning capacity. The Doctor/PW2, who has treated the petitioner and also issued the physical disability certificate/Ex.C1, in his evidence stated that the petitioner is suffering 40% of permanent disability. In cross-examination, except suggestion that the rated disability is excessive, nothing is elicited.

15. Having regard to the evidence of the Doctor/PW2 as to the crush injury and the fracture of right knee suffered by the petitioner, juxtaposing with the pleaded occupation, this Court is of the considered opinion that the disability affecting occupation can also be taken at 40%, accordingly the finding recorded by the Tribunal is affirmed.

16. The Hon'ble Apex Court in ***Pappu Deo Yadav Vs. V.Naresh Kumar and others***¹ held that the future prospectus of income shall be taken into account, even in the case of injuries, as enunciated in the dictum of Pranay Sethi. Having regard to the age and occupation of the petitioner,

¹ 2020 SCC Online SC 752

30% of the income has to be added towards future prospects. Thus, the annual loss income at 30%, if multiplied with the relevant multiplier to the age of petitioner, i.e., 14, it would come to Rs.1,96,560/-. The petitioner is entitled to this amount for loss of future earnings due to the disability. Further, considering the injuries suffered and the treatment undergone by the petitioner awarding Rs.70,000/-towards pain and sufferings, Rs.10,000/- for extra nourishment, Rs.2,000/- towards transportation is found reasonable. Hence, these findings of the Tribunal are accepted. That apart, as the disability effects the enjoyment of life, in addition granting Rs.10,000/- towards loss of amenities is found appropriate.

17. Therefore, the petitioner is eligible for the compensation under the heads as follows:

S.No.	Nature of compensation	Amount in Rs.
1.	Towards loss of income earning capacity and future prospects	1,96,560
2.	Towards pain and sufferings	70,000
3.	Towards loss of amenities	10,000
4.	Towards extra nourishments	10,000
5.	Towards of income during treatment	9,000
6.	Towards Transportation	2,000
7.	Towards medical expenses	2,700
Total		3,00,260

18. The Hon'ble Apex Court in **Surekha and others Vs. Santosh and others**² held that even without there being any cross appeal/objection, the petitioners are entitled for an award of just compensation. Further, Section 168 of the M.V. Act and the prescriptions in the award of **Nagappa Vs. Guru Dayal Singh**³, higher compensation than the claimed can be awarded if the petitioners are due for such amount. In effect, the compensation arrived in the preceding discussion shall be granted to the respondents/claim petitioners.

19. Consequently, the appeal is disposed of by modifying the impugned award in following terms:

- a. The appeal filed by the respondent is dismissed;
- b. However, the petitioner is awarded compensation of Rs.3,00,260/- (Rupees three lakhs two hundred and sixty only) with interest at 7.5% per annum from the date of petition till realization;
- c. The respondent is liable to pay the awarded compensation and directed to deposit the awarded

² 2020 ACJ 2156

³ (2003) 2 SCC 274

amount with interest within one month from the date of receipt of copy of the judgment;

- d. On deposit of enhanced amount with interest the petitioner is permitted to withdraw entire amount.

As a sequel, miscellaneous petitions, if any pending, shall stand closed.

N. TUKARAMJI, J

Date:01.09.2022
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