

HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

M.A.C.M.A.No.2904 of 2008

JUDGMENT :

The appeal is arising out of the judgment and decree in O.P.No.960 of 2000, dated 16.12.2004 on the file of Motor Accident Claims Tribunal-cum-I Additional District Judge, Ranga Reddy.

2. For the sake of convenience, the parties are referred to as arrayed in the OP.

3. The appeal is filed by the Insurance Company/2nd respondent in the O.P.. The O.P. is filed before the Tribunal under Section 166 of the Motor Vehicles Act, claiming compensation of Rs.3,00,000/- for the injuries sustained by the petitioner in the accident that occurred on 08.03.2000.

4. On the date of accident, the claimant, who was a labour, travelled in the lorry bearing No.AVT-1767 for loading and unloading gravel. After unloading gravel, at about 4.00 p.m., when the lorry reached Jaffarpalli Stone Crusher mill, the stepny tyre

which was kept in the body of the lorry, suddenly got burst due to which, the claimant along with other labors sustained grievous injuries and the claimant underwent treatment in Osmania Government hospital for a period of one month.

5. It is the specific contention of the claimant before the Tribunal that he sustained fracture to his left leg both bones, apart from other bleeding injuries all over the body due to the hit of the burst tyre and disc and later could not perform any work due to permanent disability and incurred huge amounts for medical expenses.

6. A detailed counter was filed by the Insurance Company denying the nature of the accident, the medical expenditure incurred and also about contributory negligence on the part of the claimant and prayed to dismiss the claim.

7. The Tribunal, after considering the oral and documentary evidence on record, has granted compensation of Rs.3,00,000/-. Being aggrieved by the said order, the Insurance Company has preferred this appeal.

8. Heard learned counsel for both the parties and perused the record.

9. It is contended by the learned counsel for the appellant that there is contributory negligence on the part of the claimant and the Tribunal did not consider the said fact, and therefore, the claimant is not entitled for the awarded amount in view of contributory negligence and prayed to allow the appeal.

10. On perusal of the entire evidence on record, there is no dispute as to the manner in which the accident occurred on 08.03.2000. The claimant himself was examined as PW-1 and Exs.A-1 to A-5 were marked. Exs.A-1 and A-2 are the certified copies of FIR and charge sheet, which clearly disclose that the stepny tyre was loaded in the body of the lorry by the driver of the lorry and the claimant and five others sat in the lorry as they are engaged as labours for loading and unloading the gravel and due to the burst of the tyre, the claimant and others sustained injuries and further, the claimant received fracture to his left leg and therefore, no negligence can be attributed to the claimant. It is pertinent to

note that sitting on a tyre loaded in the body of the lorry cannot be treated as contributory negligence. There is no error or irregularity in the orders of the Tribunal as to the finding of negligence on the part of the driver of the lorry and the order of the Tribunal with respect to the finding of contributory negligence needs no interference.

11. On the other hand, the learned counsel for the claimant i.e. the respondent in the appeal relied on the judgment of the Apex Court in **Surekha and others v. Santosh and others (2020 ACJ 2156)**, wherein, their Lordships have held that even in the appeals filed by the insurance Company, compensation can be enhanced to the claimant in the absence of cross appeal. Therefore, prayed to enhance compensation in the present appeal.

12. It is pertinent to mention that initially the claim is for Rs.1,50,000/- and later enhancement was being done by way of amendment before the Tribunal for Rs.3,00,000/-. The Tribunal has taken the monthly income of the claimant as Rs.2,500/- as per Minimum Wages Act. As per the proposition laid down in

Ramchandruppa's case, an amount of Rs.4,500/- can be fixed for a coolie/labourer even in the absence of documentary evidence. The evidence of the Doctor i.e. PW-2 disclose that the claimant sustained 40% of disability which is corroborated by Ex.A-5/the Certificate issued by the Medical Board. If 40% future prospects is added, it would come to Rs.6,300/- (Rs.4,500 + Rs.1,800). As the appellant was aged 35 years as on the date of accident, the multiplier would be '16' for the age group of 31 to 35 years. Therefore, the claimant/injured is entitled for loss of future income i.e. Rs.4,83,840/- (Rs.6,300 X 12 X 16 X 40/100). Further, the claimant is also entitled for Rs.25,000/- towards pain and suffering, Rs.10,000/- for transportation, Rs.5,000/- towards attendant charges and Rs.5,000/- towards extra-nourishment.

13. Thus, the claimant is entitled to the compensation under the following heads;

1. Loss of future income -	Rs.4,83,840/-
2. Pain and suffering -	Rs.25,000/-
3. Extra-nourishment -	Rs.5,000/-
4. Transportation -	Rs.10,000/-
5. Attendant charges -	Rs.5,000/-

TOTAL - Rs.5,28,840/-

14. Accordingly, appeal is dismissed by enhancing the compensation amount awarded by the Tribunal from Rs.3,00,000/- to Rs.5,28,840/- with costs and interest at the rate of 7.5% per annum from the date of petition till the date of realization, payable by the appellant/and respondent No.1 in the O.P. jointly and severally, within one month from the date of receipt of a copy of this order. As the accident occurred in the year 2000, the claimant is entitled to withdraw the entire amount, after duly paying the deficit Court fee.

Pending miscellaneous applications, if any, shall stand closed.

G.ANUPAMA CHAKRAVARTHY, J

Date: 02.12.2022

ajr