

THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

M.A.C.M.A.No.1300 of 2018

JUDGMENT:

Assailing the order and decree, dated 15.11.2017 made in M.V.O.P.No.157 of 2014 on the file of the Motor Vehicles Accidents Claims Tribunal-cum-XII Additional Chief Judge, City Civil Court, Secunderabad (for short "the Tribunal"), the United India Insurance Company Limited, preferred this appeal.

2. For the sake of convenience, hereinafter, the parties shall be referred to as per their array before the Tribunal.

3. Brief facts of the case are that the petitioner filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.9,00,000/- for the injuries sustained by him in a motor vehicle accident that occurred on 08.11.2013. According to the petitioner, on 8.11.2013, he, along with one Sheelam Ramesh Reddy, was returning to Gurramgudem Village on motorcycle bearing No.AP 20 AS 1085 and when they reached near

Venkatapuram Village, one tipper bearing No.AP 20X 9009, owned by respondent No.1 and insured with the respondent No.2, appellant herein, being driven by its driver in a rash and negligent manner at high speed, dashed the motorcycle of the petitioner, as a result of which, the petitioner fell down and sustained injuries. Immediately after the accident, the petitioner was shifted to Government Hospital, Kothagudem and thereafter he was shifted to Gandhi Hospital, Secunderabad, where his right leg was amputated above knee. It is the further case of the petitioner that prior to the accident, he was earning Rs.200/- to Rs.300/- per day by doing mason work and due to amputation of right leg, he is unable to do any work and lost his earnings. Therefore, he laid the claim against the owner and insurer of the offending vehicle, Tipper.

4. Considering the claim and counter filed by the appellant herein and also the oral and documentary evidence brought on record, the tribunal partly allowed the O.P. awarding a sum of Rs.8,49,600/- towards compensation with interest at 9% per annum, to be paid by

the respondents jointly and severally. Challenging the same, the appellant-Insurance Company filed the present appeal.

5. Heard both sides and perused the record.

6. The learned Standing Counsel for the appellant submits that there was a contributory negligence on the part of the petitioner, who was riding the motorcycle at the time of the accident but the Tribunal erred in holding that the accident occurred only due to the rash and negligent driving of the driver of the Tipper. It is further contended that the Tribunal ought to have taken into consideration the income of the petitioner at Rs.100/- per day in the absence of any evidence adduced by the petitioner in relation to his income.

7. Learned counsel appearing for the petitioner submits that the Tribunal has awarded just compensation, which needs no interference by this Court. It is further submitted that the accident occurred only due to the rash and negligent driving of the driver of the Tipper and that as

there was no negligence on the part of the rider of the motorcycle, the tribunal has rightly answered the issue No.1 holding that the accident occurred only due to the rash and negligent driving of the driver of the Tipper.

8. With regard to the manner in which the accident took place, a perusal of the impugned judgment discloses that the Tribunal has framed Issue No.1 as to whether the accident occurred resulting in injury to the petitioner due to the rash and negligent driving of the vehicle i.e., Tipper bearing No.AP 20X 9009 by its driver, to which the Tribunal after considering the evidence of P.W.1 coupled with the documentary evidence i.e., Exs.A1 and A2, has categorically observed that the accident has occurred due to the rash and negligent driving of the driver of the Tipper and has answered the issue in favour of the petitioner and against the respondents. Therefore, I see no reason to interfere with the finding of the Tribunal that the accident occurred due to the rash and negligent driving of the driver of the Tipper.

9. Insofar as the quantum of compensation is concerned, admittedly, right leg of the petitioner was amputated above knee and as per Ex.A5, Disability Certificate, issued by the Medical Board, the petitioner has sustained 80% permanent disability. After considering the age and avocation of the petitioner, the Tribunal has taken his income at Rs.6000/- per month. The said income fixed by the tribunal at Rs.6,000/- per month cannot be said to be excessive more particularly when the petitioner is a skilled person. Therefore, after considering the disability sustained by the petitioner, treatment undergone by him, amount spent by him for his treatment and for purchase of artificial limb, the Tribunal has awarded just compensation, which needs no interference by this Court, more particularly when the petitioner has suffered 80% permanent disability.

10. Insofar as the interest awarded by the Tribunal is that the petitioner is entitled to interest @ 7.5% per annum on the compensation awarded by the Tribunal from the date of petition till realization, as per the decision of the

Apex Court in **Rajesh and others v. Rajbir Singh and others**¹. Hence, the interest granted by the Tribunal @ 9% per annum is reduced to 7.5% per annum on the awarded amount of Rs.8,49,600/- from the date of petition till the date of realization. Except the said modification, the remaining operative portion of the impugned order is confirmed.

11. Accordingly, the M.A.C.M.A. is allowed in part reducing the interest from 9% to 7.5% per annum on the awarded amount of Rs.8,49,600/- from the date of petition till the date of realization. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SMT. M.G.PRIYADARSINI, J

05.01.2023
tsr

¹ 2013 ACJ 1403 = 2013 (4) ALT 35

HONOURABLE SMT. JUSTICE M.G. PRIYADARSINI

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DATE: 05-01-2023