

HON'BLE SRI JUSTICE M. GANGA RAO

M.A.C.M.A.NO.790 OF 2008

JUDGMENT:

The appellant-insurance company filed this appeal against award and decree dated 30-10-2007 passed in M.V.O.P.No.202 of 2004 by the Motor Accidents Claims Tribunal (V Additional District Judge-Fast Tract Court), Ongole granting total compensation of Rs.3,17,500/- along with 7.5% interest per annum for the 50% permanent disability suffered by the 1st respondent. The accident occurred on 03-03-2004 due to the rash and negligent driving of the driver of the offending vehicle insured with the appellant-insurance company.

2. Heard both the counsel. The appeal is filed mainly contending that the Tribunal granted excessive compensation over and above claim made by the 1st respondent grossly erred in taking the monthly income of the 1st respondent as Rs.2,500/-, and granting Rs.50,000/- towards pain and suffering.

3. The brief facts of the case are that on 03-03-2004 when the 1st respondent was going slowly on his cycle to his masonry work at Tangutur, on the left side of highway road, the lorry bearing No.TN 28 F 2565 owned by the 2nd respondent and driven by its driver in a rash and negligent manner hit the cycle of the 1st respondent behind his back and he fell down on the road, the wheel of the lorry ran over on the left leg of the 1st respondent, as a result, the left leg was crushed. Immediately he was taken to Government Hospital, Ongole for treatment, where on the next day

the left leg of the 1st respondent was amputated below the knee and he claimed compensation of Rs.2,00,000/- against the appellant-insurance company and 2nd respondent, the owner of the vehicle. The 2nd respondent-cum-owner of the vehicle was remained *exparte* before the Tribunal. The appellant-insurance company filed written statement denying averments of the claim petition. The Tribunal basing on the pleadings of both parties, framed the following issues for its consideration :

- i. *Whether the petitioner sustained injuries in Motor Vehicle Accident made by lorry bearing No.TN 28 F 2565 due to rash and negligent driving of its driver?*
- ii. *Whether the petitioner is entitled to claim compensation? If so, to what amount and from whom?*
- iii. *To what relief ?*

4. During the trial, the 1st respondent himself examined as PW.1 and on his behalf PW.2 was examined, Exs.A.1 to Ex.A.4 and Ex.X.1 were marked on behalf of the 1st respondent. On behalf of appellant-insurance company, copy of insurance policy marked as Ex.B.1. The Tribunal based on the evidence of PW.1 and coupled with Ex.A.1, certified copy of F.I.R, Ex.A.2, wound certificate and Ex.A.3, certified copy of the charge sheet has come to conclusion that the accident occurred due to the rash and negligent driving of the driver of the offending vehicle belongs to the 2nd respondent and insured with the appellant-insurance company. The finding of the Tribunal is that the accident occurred due to rash and negligent driving of the driver of the offending vehicle, in the absence of any contrary evidence adduced by the appellant, cannot be found fault with. The Tribunal for granting compensation has taken the income of the deceased as Rs.2,500/- per month and

arrived the annual income of 1st respondent as Rs.30,000/- and applied multiplier '17', as the age of 1st respondent as on the date of accident was 25 years, total loss of income of 1st respondent was computed to Rs.5,10,000/-, 50% of which is taken as loss of compensation amounting to Rs.2,55,000/- as the 1st respondent sustained 50% of disability in the accident as per the evidence of PW.2, Doctor who attended on him and operated. In addition to the same, the Tribunal granted loss of income for three months at the rate of Rs.2,500/- per month amounting to Rs.7,500/- and Rs.5,000/- towards medical expenses and extra nourishment and Rs.50,000/- towards pain and suffering.

5. The Tribunal granted total compensation of Rs.3,17,500/- with 7.5% interest per annum against the claim of Rs.2,00,000/-. As per the Judgment of the Supreme Court in the case of **Nagappa Vs. Gurudayal Singh and others**¹ held that though the compensation claimed by the claimant before the Tribunal, is less than the computed compensation, there is no restriction to the Tribunal to grant just and fair compensation over and above claim. Hence, the compensation granted by the Tribunal amounting to Rs.3,17,500/- could not said to be excessive compensation for the 50% disability sustained by the 1st respondent in the accident. The 1st respondent being a mason and it is a hard labour, he could not attend the same. However, the 1st respondent has to pay the difference of court fee for the excess amount of Rs.1,17,500/-.

6. In the facts and circumstances of the case, submissions of the counsel and perused the record, this court found that there is

¹ 2003(1) ALD 1 (SC)

no merits in the contention of the counsel for the appellant that the Tribunal has granted excess compensation over and above the claim made by the claimant and Tribunal grossly erred in granting Rs.50,000/- towards pain and suffering to the 1st respondent for the injury sustained by him and left leg below knee was amputated due to crush injury suffered by him in the accident and hospitalised and he took treatment in the hospital for 1 ½ month. During that period, due the nature of injury, it could be said that he could have undergone more pain and suffering and same could be easily assessed as Rs.50,000/-.

7. In view of the decision of the Supreme Court in the case referred to supra, the 1st respondent is entitled for just compensation. The Tribunal has awarded total compensation of Rs.3,17,500/- over and above the claim of Rs.2,00,000/- could not said to be illegal.

8. Accordingly, the appeal is dismissed. There shall be no order as to costs.

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

JUSTICE M. GANGA RAO

Dated 13th February, 2019.
JKS

HONOURABLE SRI JUSTICE M. GANGA RAO

M.A.C.M.A.No.790 of 2008

Dated 13th day of February 2019

JKS/KSN