

HON'BLE SRI JUSTICE M. GANGA RAO

MACMA.No.1539 of 2007

JUDGMENT:

The appellant is the injured claimant filed this appeal against the award and decree dated 14.03.2007 passed in MVOP.No.263 of 2004 by the Chairman, Motor Accident Claims Tribunal-cum-IX Additional District Judge, Guntur, whereby the petitioner was granted compensation of Rs.1,00,000/- along with interest at 7.5% per annum for 30% disability sustained by the appellant due to injuries received in the accident occurred on 05.02.2004.

The brief facts of the case are that while the appellant along with others were travelling in a jeep bearing No.AP-7U-5219 from Gurajala to Chilakaluripet and when they reached near Dachavaram Kunta, Nakarekallu at about 5.00 A.M. the driver of the jeep drove the vehicle in high speed without blowing horn in rash and negligent manner dashed the tamarind tree and the jeep turned turtle. In that accident, the petitioner received the injuries on his right hip, right knee/leg and right shoulder apart from other injuries all over his body as per Ex.P.3 wound certificate. The accident was reported to the Nakarikal Police Station and the police registered the case as Crime No.6 of 2004 under Section 337 of the Indian Penal Code. Immediately, the petitioner was shifted to Narasaraopet Government Hospital and from there to Government General Hospital, Guntur and on the next day, he was shifted to Dr. Y. Nageswara Rao, Hospital for treatment. On investigation, police filed Ex.A.2 charge sheet. The Tribunal, while considering the issue Nos.1 and 2,

whether the jeep bearing No.AP-7U-5219 was involved in accident on 05.02.2004 at 5.00 A.M., near Dachavaramkunta, Nakarikal Mandal and whether the accident occurred due to the rash and negligent act of the driver of the offending jeep, based on the evidence of PW.1 and Ex.A.1-FIR and Ex.A.2-certified copy of the charge sheet, rightly came to the conclusion that the accident occurred due to the rash and negligent driving of the driver of the offending vehicle. The Tribunal, while dealing with the Issue Nos.3 and 4, whether the petitioner sustained injuries in the said accident and to that what amount, having considered the evidence of PW.1 and PW.2 Dr. Y. Nageswara Rao and PW.3-Dr. Vijay Babu, came to the conclusion that the petitioner received injuries on his right hip, right knee/leg and right shoulder apart from other injuries all over his body as per Ex.A.3 wound certificate and he was also inserted steel rods to his left leg fracture and took treatment as inpatient for 40 days and he spent Rs.16,000/- towards medical expenses in Dr. Y. Nageswara Rao Hospital, apart from that he spent Rs.12,000/- towards medical expenses and he lost some of the bills. He suffered 30% permanent partial disability.

Prior to the accident, the appellant was doing vegetable business and earning Rs.150/- to Rs.200/- per day and due to the accident he is unable to do his vegetable business. The appellant also produced medical bills Ex.A.4 for Rs.10,054/- and Ex.A.5 certificate issued by Dr. Y. Nageswara Rao for an amount of Rs.16,000/- and Ex.A.6-x-ray films eight in number with covers. The

evidence of PW.2-Dr. Y. Nageswara Rao reveals that Ex.A.6-X-rays were taken on his advice. PW.3-Dr. V. Vijaya Bhaskar reveals that the fracture sustained by the petitioner are united and his right leg was shortened to 3/4 inches and the foot drop right side and there is moderate restriction of right hip joint moments which are also painful and not able to squat and in view of the above the appellant suffering with 30% to 40% permanent partial disability. The appellant needs another surgery for restriction of foot drop and it costs Rs.10,000/- to Rs.15,000/- and it needs 15 days for hospitalization and one and half month for treatment. However, the Tribunal has taken 30% partial permanent disability of the appellant and granted Rs.72,000/- towards his disability and also towards his loss of income during that period. The claim of the petitioner is that he used to earn Rs.150/- per day by doing vegetable commission business through out the year and having constant income of Rs.150/- to Rs.200/- per day through out the year. But, the Tribunal, having come to the conclusion, granted meager amount under various heads for pain and suffering and loss of amenities Rs.15,000/- and future medical expenses Rs.19,000/-. The Tribunal granted Rs.13,000/- towards hospital charges and Rs.10,054/- towards his medical expenses against the claim of Rs.28,000/-. As per Ex.A.5 issued by PW.2 stated that he received Rs.16,600/- from the appellant towards his treatment in the hospital under various heads. As per the evidence of PWs.2 and 3, the appellant suffered with moderate restriction of right hip joint moments and 3/4th inch

shortening of right leg with foot drop right side. The Tribunal awarded meagre amount of Rs.15,000/- for pain and suffering and loss of amenities in his life. The Tribunal, computing the compensation of Rs.1,20,054/- and awarded compensation of Rs.1,00,000/- only as the appellant claimed that amount and along with 7.5% interest Per Annum and held that the respondents 1 and 2 jointly and severally liable to pay the compensation amount.

Sri T.S. Rayalu, learned counsel appearing for the appellant submits that this appeal is filed seeking enhancement of the compensation mainly on the ground that the Tribunal should have awarded just compensation to the appellant having discussed the various aspects of the injuries and also shortening of his right leg by 3/4th inches with foot drop right side and appellant needs another surgery for restriction of foot drop and it costs Rs.10,000/- to Rs.15,000/- and requires 15 days for hospitalization and one and half month for treatment. He used to earn Rs.150/- to Rs.200/- per day by doing vegetable commission business. After the accident with 30% disability, the appellant could not able to do his vegetable commission business. However, the Tribunal granted meagre amount under various heads, having accepted the evidence of PW.1 and PWs.2 and 3 are doctors and on perusal of Ex.A.1 to A.6 and no adequate compensation was granted towards future medical expenses and loss of amenities. In view of the decision of the Hon'ble Supreme Court in ***Nagappa v. Gurudayal Singh and***

others¹, the Tribunal ought to have granted just compensation over and above the claim made by the appellant.

Sri T. Ramulu, learned counsel appearing for the 2nd respondent Insurance Company would contend that there is no illegality or irregularity in the award passed by the Tribunal and no need to enhance the compensation amount. He made strenuous efforts to sustain the award of the Tribunal. The Tribunal rightly restricted the compensation Rs.1,00,000/- as claimed by the appellant. The Tribunal has taken the notional income of the appellant as Rs.15,000/- per annum by disbelieving the evidence of the appellant/PW.1 that he is doing vegetable commission business and used to get Rs.150/- to Rs.200/- per day with regard to his income. There are no grounds to interfere in the award.

In the facts and circumstances of the case and considering the submissions of the counsel, on perusal of the record, this court found that the Tribunal grossly erred in restricting the compensation to the claim amount of Rs.1,00,000/- having arrived at the compensation amount of Rs.1,20,000/- under various heads. There is no reason for the Tribunal to disbelieve the evidence of the appellant/PW.1, that prior to the accident, he was doing vegetable commission business and used to get Rs.150/- to Rs.200/- per day and with that income, he used to maintain his family. At the time of accident, the appellant was aged 40 years and hale and healthy and used to earn Rs.150/- to Rs.200/- per day by doing vegetable

¹ (2003) 2 SCC 274

commission business to maintain his family. When the same is not disputed by the respondents by adducing any contra evidence, the Tribunal at least could have taken the daily earning of the appellant as Rs.100/- per day, Rs.3,000/- per month. His annual income could be Rs.36,000/-. His total loss of income could be arrived by applying multiplier '15' as he was aged 40 years ($36,000 \times 15$), Rs.5,40,000/-. He suffered 30% permanent partial disability. Hence, he is entitled for compensation of Rs.1,62,000/- ($5,40,000 \times 30\%$) under 30% disability. In addition to that, he is entitled for Rs.25,000/- for medical expenses including future medical expenses and Rs.15,000/- towards pain and suffering and Rs.15,000/- for loss of amenities. Hence, this court felt it just and proper to grant compensation of Rs.2,17,000/- ($1,62,000/- + 55,000/-$) along with interest @ 7.5% per annum. The respondents 1 and 2 are jointly and severally liable to pay the compensation to the appellant.

Accordingly, the appeal is allowed enhancing the compensation from Rs.1,00,000/- to Rs.2,17,000/- along with 7.5% interest per annum. The respondents are directed to deposit the said compensation in the Tribunal within a period of two months from the date of receipt of a copy of this order. The appellant is entitled to withdraw the entire amount. No order as to costs.

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

M. GANGA RAO, J

Date: 07-03-2019
Ksn

HONOURABLE SRI JUSTICE M. GANGA RAO

MACMA.No.1539 of 2007

7th March 2019

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