

(2001) 09 AP CK 0140
In the Andhra Pradesh High Court
Case No : AAO No. 922 of 1996

APSRTC, Managing Director, Mushirabad, Hyd.

APPELLANT

Vs

S. Dhanamjaya Reddy

RESPONDENT

Date of Decision : 07-09-2001

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 166(1)

Citation : (2003) ACJ 941 : (2001) 6 ALD 790

Hon'ble Judges : Motilal B. Naik, J;G. Rohini, J

Bench : Division Bench

Advocate : A.V. Sivaiah, SC, for the Appellant; A. Narasimha Reddy for G. Dasaratharami Reddy, for the Respondent

Final Decision : Allowed

Judgement

Motilal B. Naik, J.—Appellant is the A.P. State Road Transport Corporation represented by its Managing Director, Mushirabad, Hyderabad, who assails the award dated 7.2.1995 made by the Motor Accidents Claims Tribunal-cum-Additional District Judge, Tirupati in M.V.O.P. No. 100 of 1991, on various grounds.

2. The respondent in the appeal instituted the above M.V.O.P. before the Tribunal u/s 166(1)(a) of the M.V. Act claiming a compensation of Rs. 9,64,000/- for the injuries sustained by him in a motor bus accident that took place on 31.1.1991 around 5.15 P.M. at S.V. Bus Station at Tirupati. According to the respondent-claimant, at the relevant point of time he was aged 37 years and was working as a Watchman in State Bank of Hyderabad, Indiranagar Branch at Madras and was drawing a sum of Rs. 2,500/- per month towards salary. While so, on 31.1.1991 around 5.15 P.M. when the respondent-claimant was standing at the out gate of S.V. Bus Station, Tirupati by the side of the cement pillar, the bus bearing No. AAZ 4749, which belongs to the appellant-corporation carrying two iron cupboards on the top of the bus was driven in a rash and negligent manner and dashed against the cement pillar of the out gate of the Bus Station, as a result

the cement pillar fell on him, causing multiple major injuries to his legs. As a result of the injuries sustained by the respondent, he is not in a position to move from the bed and his life became useless and unfit for his usual life and also his job.

3. As a result of the disability sustained by him, the claimant instituted M.V.O.P. No. 100 of 1991 before the Tribunal claiming a compensation of Rs. 9,64,000/- under various heads as indicated above.

4. The appellant-corporation filed a counter admitting the injuries being sustained by the claimant in the accident, but pleaded that the amount of compensation claimed by the claimant under various heads is excessive. It is further stated in the counter that on 31.1.1991 the bus in question was run on the route Kalakada to Tirumala and it was driven by its driver very cautiously and when the bus was proceeding to Tirumala, it was stopped at Mangapuram bus stage near Tirupati and at the request of two passengers, the Conductor allowed two iron safes to be placed on the top of the bus and on reaching S.V. Bus Station at Tirupati, the bus entered the Bus Station from the gate "IN" without touching the name arch and that when the bus was going out through the outer gate, the iron safes kept on the top of the bus came into contact with the arch and the left side pillar on which the arch was erected suddenly broke and fell on the claimant, who was standing near by. It is also pleaded in the counter that the claimant was not expected to stand near by the pillar at the outer gate where there was heavy traffic of the busses and therefore, there was contributory negligence on the part of the claimant. It is further stated in the counter that there was no rashness or negligence on the part of the driver of the bus.

5. Basing on the rival pleadings, the Tribunal framed the following issues for adjudication.

1. Whether the petitioner received injuries due to rash and negligent driving of the bus AEZ 4749 by its driver?

2. Whether the petitioner is entitled to compensation and if so, to what amount?

3. To what relief?

6. Before the Tribunal, on behalf of the claimant P.Ws. 1 to 4 were examined and Exs.A. 1 to A. 7 were marked. On behalf of the appellant-corporation, RW.I was examined, but no documents were marked.

7. The Tribunal on the basis of the oral and documentary evidence held the 1st issue against the Corporation holding that the accident took place as a result of the rash and negligent driving of the RTC bus. In so far as the 2nd issue, which relates to the entitlement of compensation, the Tribunal having regard to the evidence of the Medical Officer i.e., P.W.1, who treated the claimant, held that the claimant is entitled for a compensation of Rs. 4,10,300/- under various heads.

8. As far as the loss of earning capacity and loss to the estate, the Tribunal took

into consideration the permanent disability at 80% sustained by the claimant. The Tribunal also took into consideration the salary of the injured i.e., Rs. 2,384.58 Ps. per month at the time of the accident and after deducting one third amount towards personal expenses, the Tribunal was of the view that the monthly contribution of the injured to the family would be Rs. 1600/-per month i.e., Rs. 90,200/- per annum. Appreciating the evidence of P.W.2, who is the injured himself, the Tribunal considering the age of the deceased i.e., 37 years at the time of the accident, applied multiplier 14 and determined the loss of earnings at Rs. 2,68,800/-. Apart from the said amount, the Tribunal also took into consideration the fact that the injured requires an attendant to manage his affairs awarded an amount of Rs. 96,500/- towards past and future attendant charges. The Tribunal also awarded an amount of Rs. 25,000/- towards pain and suffering and Rs. 20,000/- towards extra nourishment, medical expenses, transport charges. Thus in all the Tribunal awarded an amount of Rs. 4,10,300/- under the various heads as indicated above. Since it was informed to the Tribunal that the injured had already received an amount of Rs. 12,000/-under no fault liability, the said amount was given credit to the total compensation of Rs. 4,10,300/- and thus an amount of Rs. 3,98,300/- was awarded to the claimant. The Tribunal also granted interest at the rate of 12% p.a. on the above compensation amount from the date of the petition i.e., 8.3.1991 till the date of realisation. It is this award, which is challenged by the appellant-corporation in the present appeal on various grounds.

9. Sri A.V. Sivaiah, learned Standing Counsel for the appellant-Corporation primarily contended that under the head loss of earnings reasonable compensation could be awarded by the Courts depending upon various factors, which include the age of the person, nature and the extent of disability sustained by the injured and nature of the job the claimant was doing at the relevant point of time. He stated that the claimant was employed as a Watchman in a nationalized bank and even after the accident, the Bank Authorities accommodated the claimant in the same job with same salary as was drawn by him prior to the accident and there is no loss of earnings and therefore, the Tribunal could not have awarded an amount of Rs. 2,68,800/- under the head loss of earnings. The learned Standing Counsel vehemently contended that as the claimant has been continued in the same job with the same salary as was drawn by him prior to the accident, his earning has not at all been affected and the formula applied by the Tribunal by considering the age of the claimant, his earning capacity and deducting one third amount from the salary towards his personal expenses, applying multiplier and granting compensation for the loss of earnings as if the claimant lost his job is unacceptable and pleaded that the compensation awarded by the Tribunal under the head of loss of earnings is liable to be set aside.

10. Heard Sri Narasimha Reddy, learned counsel for the respondent-claimant also, who justified the award made by the Tribunal and stated that as the claimant sustained 80% disability to his legs his entire future personal life is

marred and therefore, the compensation awarded by the Tribunal is just and reasonable and no interference is required.

11. During the course of hearing of the appeal, the learned Standing Counsel for the appellant though questioned the awarding of compensation by the Tribunal under the other heads, but did not seriously dispute the same. Therefore, the only point which remains to be decided by this Court is, whether the Tribunal was justified in awarding an amount of Rs. 2,68,800/- towards compensation under the head loss of earnings of the claimant.

12. The evidence on record, which is reflected in the impugned award made by the Tribunal, would go to show that the claimant was accommodated in the same job and with the same salary as he was drawing prior to the accident. The claimant was aged 37 years at the time of the accident and was working as a Watchman in a nationalized bank at Madras. His salary at the time of the accident was Rs. 2,384/- per month. The Tribunal while setting apart one third amount towards the personal expenses of the claimant, determined the annual contribution of the claimant to his family at Rs. 90,200/-. Since the injured was aged 37 years at the time of the accident, the Tribunal applied multiplier 14 and awarded an amount of Rs. 2,68,800/- towards compensation under the head of loss of earnings.

13. It is true that the claimant has been permitted to work in the same capacity by the Bank Authorities and is being paid the same salary as was drawn by him prior to the accident. While determining the compensation under the head loss of earnings, several factors have to be taken into account. In case of death, naturally the loss of earnings could be determined on the basis of the age, salary being received by the deceased at the time of his death and future prospects, if any, of the deceased. In a case of injury where permanent disability is caused to the injured, Courts have to take into consideration the loss of earning capacity as a result of the disability suffered by the injured.

14. In this case the claimant though sustained 80% disability to his legs, the Bank Authorities accommodated him in the same job with the same salary as he was drawing prior to the accident. As such for all practical purposes it could be said that there is no loss of earnings. But the question of loss of earnings is a relative term, which has to be understood in a different context depending upon the facts and circumstances of the case. As a result of 80% disability to his legs, the claimant cannot have that much vigor to do the same job and there would be no guarantee that the employer of the injured would continue him in the same job with the same salary till he reaches superannuation or the future prospects of promotion etc, that would be available to the claimant if he had not met with the accident, would be available to him during his remaining service, which is solely depending upon the mercy of the Bank Authorities. As a result of the permanent disability incurred by the claimant, future promotions would be a distant dream to the claimant and his usual personal life is adversely affected and is in a miserable position, which cannot be measured in terms of money. Therefore,

taking into consideration the miserable life, which the claimant has to put up during his life span, he has to be reasonably compensated. The loss of earnings, which the Tribunal awarded, as a matter of fact, the claimant is entitled under the scheme of the Act. Can this be denied to him only on the ground that even after the accident, despite the extent of disability suffered, the employer has accommodated him in the same post and is paying same salary as was drawn by him prior to the accident? In our view, there is no rationale in denying total compensation under the head loss of earnings. However, some method has to be adopted and fair and reasonable view has to be taken by Court while dealing with a situation arising out of such a contingency.

15. In *Depot Manager, APSRTC Vs. Ramisetty Koteswar Rao and others*, , the learned Division Bench of this Court has taken a view that some amount has also to be awarded under the head of loss of earnings even though the disabled claimant was given full scale by the Department. In *Mohanbhai Gemabhai Vs. Balubhai Savjibhai and Others*, , the learned Division Bench of Gujarat High Court has considered these aspects also and had made it known that it is imperative for the Tribunals, in the facts and circumstances of the case and considering the medical evidence showing the extent of physical impairment, to award compensation under the head of loss of earnings without regard to the salary being paid to the injured at the same rate as he was being paid prior to the accident.

16. Even though the employer has accommodated the injured in the same job with the same salary as was drawn by him prior to the accident, but he is not in a position to do the job with the same vigor and fitness as was done by him prior to the accident. In the background of the disability to the claimant, there is no guarantee that he can get any future promotions in his job. In such circumstances, though compensation has been awarded under the heads of pain and suffering and attendant charges, compensation cannot be denied to the injured under the head loss of earnings. In normal circumstances the claimant is entitled for compensation under the head loss of earnings as determined by the Tribunal. Following the ratio laid down by this Court and the Gujarat High Court in the decisions (1 and 2 supra), we are of the view that the claimant shall also be entitled to certain amount of compensation under the head loss of earnings without regard to the fact that he has been accommodated by the employer in the same job with the same salary as was drawn by him prior to the accident.

17. In this case the claimant is working as a watchman in a nationalized bank at Madras and was drawing salary of Rs. 2,384/- per month at the time of the accident. The medical evidence shows that the injured sustained 80% disability. Due to the 80% disability sustained by the injured, his future promotional prospects are blocked. In a case where the disability is negligible and it does not come on the way for future promotional prospects, if the employer continues the injured in the same post and offers same salary, if compensation is awarded under the head loss of earnings while applying relevant multiplier, then there is a

case for pleading that the compensation awarded under the head loss of earnings is unjust. Due to the 80% disability, the claimant cannot lead a normal life. Such a disability though cannot be compensated with any quantum of amount, yet granting compensation under the head loss of earnings is permissible.

18. Considering the facts and circumstances of the case, the 80% disability sustained by the claimant, we are of the view that the Tribunal is though justified in awarding compensation under the head loss of earnings, but however, the quantum of compensation so determined seems to us a bit higher. On the basis of the age, earning capacity and deducting one third amount towards his personal expenses, the Tribunal awarded compensation of Rs. 2,68,800/- to the claimant under the head loss of earnings. Therefore, we are of the view that deduction of one fourth amount i.e., Rs. 67,200/- from the compensation of Rs. 2,68,800/- awarded by the Tribunal under the head loss of earnings would meet the ends of justice. Thus the claimant shall be entitled to a compensation of Rs. 2,01,600/- under the head loss of earnings. We have already indicated above that the learned Standing Counsel for the appellant has not seriously disputed the award made by the Tribunal granting compensation under the other heads i.e., attendant charges, pain suffering and medical expenses etc., we confirm the award made by the Tribunal on the other counts except under the head loss of earnings as indicated above.

19. The appeal is allowed in part modifying the award made by the Tribunal to the extent as indicated above. No costs.