
(2010) 02 AP CK 0031

In the Andhra Pradesh High Court

Case No : M.A.C.M.A. No. 2772 of 2006

Syed Yousuf

APPELLANT

Vs

Rajesh Enterprises and Another

RESPONDENT

Date of Decision : 16-02-2010

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2010) 3 ALD 690 : (2010) 3 ALT 723

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : Jagathpal Reddy Kasi Reddy, for the Appellant; None, for the Respondent

Judgement

C.V. Nagarjuna Reddy, J.—This appeal is filed against award dated 30.10.2006 in O.P. No. 3041 of 2003 on the file of the Chairman, MACT-cum-I Additional Metropolitan Sessions Judge-cum-XV Additional Chief Judge, Hyderabad (for short, "the Tribunal").

2. I have heard Sri Kasireddy Jagathpal Reddy, learned Counsel for the appellant. Learned Counsel for respondent No. 2 is not present.

3. The claimant in the said O.P. is the appellant in this appeal filed by him feeling aggrieved by the inadequacy of compensation awarded by the Tribunal. The appellant, at the relevant time, was an Auto driver. On 07.11.2003, at about 12.45 hours, while the appellant was proceeding from Fathenagar bridge towards Sanathnagar in his Auto bearing No. AP 9T 894, Maruthi van bearing No. AP 9AD 2407 came from Balkampet side and hit the Auto resulting in grievous injuries to the appellant. The appellant therefore filed the abovementioned O.P. claiming compensation of Rs. 6,00,000/-under various heads. The Tribunal, having found that the driver of the vehicle of respondent No. 1 was guilty of rash and negligent driving resulting in causing of the accident, awarded a sum of Rs. 1,29,000/- towards compensation under various heads.

4. At the hearing, the learned Counsel for the appellant submitted that the compensation awarded by the Tribunal is too meagre and inadequate. He submitted that the appellant was an Auto driver and the Tribunal has made a very low estimate of his income at Rs. 1,500/- per month. He also submitted that no amount has been awarded for pain and suffering.

5. A perusal of the award shows that the Tribunal has awarded Rs. 50,000/- "for the injuries sustained" by the appellant, Rs. 70,000/- towards hospital expenses, cost of medicines, extra nourishment, transport charges and other miscellaneous expenses and Rs. 4,500/- towards loss of income for a period of three months during which the appellant had taken treatment.

6. The learned Counsel for the appellant, as noted above, has serious complaint against the inadequate amount awarded by the Tribunal towards the injuries sustained by the appellant. A perusal of the evidence of Dr. A.K. Purohith, Neuro surgeon, examined as PW.2, shows that the appellant has undergone the first operation on 08.11.2003 for Temporal Craniotomy and evacuation of temporal contusion. Ten days later, another surgery by way of re-exploration and bone flap replacement was done and the appellant was discharged on 22.11.2003. PW.2 further stated that after the appellant's discharge, he has taken treatment as out-patient. Exs.A5, A6, A9 and A10 relating to discharge card, medical prescriptions, out-patient card and X-ray film were marked through the said witness. PW.2 further testified that due to the said accident, the appellant was advised not to drive the auto rickshaw or any other public transport. In his cross-examination, PW.2 explained the reason for giving such advice by stating that as the appellant has suffered impaired memory with history of fits, he was advised not to perform such job, which may endanger his or others' lives. Nothing is elicited from this witness to discredit his testimony. PW.2, being the doctor who has conducted two surgeries, his opinion cannot be doubted.

7. From the evidence of the expert doctor, it is clear that the appellant, whose main occupation was running Auto, was permanently disabled from pursuing that occupation. Therefore, the accident has left a trail of disaster in the life of the appellant. The Tribunal has taken a very modest sum of Rs. 1,500/- per month as the appellant's income. An Auto driver can be expected to earn at least Rs. 100/- per day and even if he works for 25 days in a month, he will earn not less than Rs. 2,500/- per month. Even though Schedule II cannot be used as a ready reckoner for awarding compensation in a claim filed u/s 166 of the Motor Vehicles Act, 1988, as held by the Supreme Court in Shreya Pet (P) Ltd. Vs. Central Power Distribution Company of A.P. Ltd. and Others, the same can be taken as a guide for assessing the compensation. In case of permanent partial disablement, the loss of income shall be computed by computing the annual loss of income by the applicable multiplier and applying the percentage of disability.

8. As noted, in the present case, the appellant was advised not to drive the Auto rickshaw. At the age of 45 years it is not easy for one to search for an alternative line of activity which would suit him. Even assuming that the appellant may

attend to some other work, it is reasonable to presume that he will not be as proficient in his new work as he was as an Auto driver and as a result of his reduced efficiency in grappling with his work in a completely new environment, he may not be able to earn as much as he was earning as an Auto driver. If the appellant's income as Auto driver was presumed to be not less than Rs. 2,500/- per month, his loss of future income can be reasonably estimated at not less than Rs. 1,250/- per month being 50% of the said income. Applying multiplier of 13, taking schedule II as a guide the loss of future income will come to Rs. 1,95,000/-.

9. In my considered view, the appellant is entitled to a sum of Rs. 1,95,000/- towards the loss of future income. As the appellant was already awarded Rs. 50,000/-, he is entitled to a further sum of Rs. 1,45,000/-. Similarly, the appellant is entitled to a sum of Rs. 7,500/- instead of Rs. 4,500/- as awarded by the Tribunal for loss of income for a period of three months when he was taking the treatment. The appellant is entitled to interest @ 7.5% on the enhanced compensation from the date of petition till the date of payment.

10. In the result the Civil Miscellaneous Appeal is partly allowed and the award of the Tribunal is modified to the above extent.