

(2013) 12 AP CK 0068

Andhra Pradesh High Court

Case No: L.P.A. No. 42 of 2000

Katam Thimmaiah

APPELLANT

Vs

A. Amar Babu and Another

RESPONDENT

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**Date of Decision:** Dec. 16, 2013**Hon'ble Judges:** M.S.K. Jaiswal, J; L. Narasimha Reddy, J**Bench:** Division Bench**Advocate:** M. Raja Malla Reddy, for the Appellant; B. Venkataratnam for 2nd Respondent, for the Respondent

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### Judgement

L. Narasimha Reddy, J.

On 23.08.1989, the appellant was traveling in a DCM van bearing No. AHJ 5933 owned by the 1st respondent and insured with the 2nd respondent, together with some goods, for Vijayawada. When the vehicle reached Narketpally, it dashed against a stationary vehicle, resulting in injuries to the appellant and other inmates in the vehicle. The appellant filed O.P. No. 11 of 1990 before the Motor Accident Claims Tribunal-cum-Additional District Court, Nalgonda (for short "the Tribunal"), claiming a sum of Rs. 1,20,000/- as compensation. It is pleaded that on account of the accident, his right leg was amputated and he became permanently disabled. He has also furnished the particulars of the treatment undergone by him, and according to him, the income that was derived from his business was in the range of Rs. 2,000/- to Rs. 3,000/- per month.

2. The 1st respondent remained ex parte. The 2nd respondent filed a counter, opposing the O.P. It was pleaded that the appellant was traveling as a passenger in the goods vehicle, and hence, it cannot be held liable to pay the compensation.

3. Through its order, dated 09.03.1994, the Tribunal awarded a sum of Rs. 1,01,500/- as compensation. The liability of the 2nd respondent was restricted to Rs. 12,500/-.

4. Aggrieved by the order passed by the Tribunal, the appellant filed C.M.A. No. 795 of 1994 before this Court. A learned Single Judge, through order, dated 20.09.1999,

dismissed the C.M.A. and affirmed the order passed by the Tribunal. Hence, this Letters Patent Appeal, under Clause 15 of Letters Patent.

5. Heard Sri M. Raja Malla Reddy, learned counsel for the appellant, and Sri B. Venkataratnam, learned standing counsel for the 2nd respondent.

6. The O.P. was, initially, filed claiming a sum of Rs. 1,20,000/- as compensation. However, recently, the appellant got amended the O.P., claiming compensation of Rs. 5,00,000/-.

7. The Tribunal framed the following issues for its consideration:

1) Whether the petitioner received injuries, due to rash and negligent driving of the driver of van bearing No. AHJ 5933 near OCTL factory in Narketpally on N.H. No. 9 on 23.08.1989 at about 3.00 a.m.?

2) Whether the petitioner is entitled for compensation, if so, to what compensation against whom?

3) To what relief?

8. On behalf of the appellant, P.Ws. 1 to 4 were examined and Exs. A.1 to A.10, which are mostly in relation to the registration of crime and the particulars of expenditure incurred for treatment, were filed. The insurance policy was filed as Ex. B.1 and no one was examined, on behalf of the 2nd respondent. In C.M.A. No. 795 of 1994, the learned Single Judge did not frame any point, and has affirmed the order passed by the Tribunal.

9. The points, that arise for consideration before us, are:

1) Whether the appellant is entitled for enhancement of the compensation?

2) Whether the liability of the 2nd respondent can be restricted to Rs. 12,500/- only?

POINT NO. 1:

10. It is not in dispute that the appellant herein sustained injuries in the accident and the same has resulted in amputation of his right leg. Ex. A.1 - copy of FIR, Ex. A.2 - copy of charge sheet and Ex. A.3 - copy of injury certificate, established the same. Even by the time the O.P. was filed, the right leg of the appellant was amputated. The appellant is said to be a businessman, involving the sale of different commodities, by traveling to various places. He pleaded that his monthly income was in the range of Rs. 2,000/- to Rs. 3,000/-, at the relevant point of time. The Tribunal took the same at Rs. 750/- per month, on the basis that the daily wages would be Rs. 25/-. Multiplier "16" was applied, following the judgment rendered by a Division Bench of this Court. A sum of Rs. 15,000/- was awarded towards pain and suffering.

11. We are not at all satisfied with the approach of the Tribunal. Treating a businessman as daily wage unskilled worker can not at all be countenanced. A person, who supplies goods by traveling to various persons, can easily earn monthly income of Rs. 2,000/-. On account of the disability suffered by the appellant, deduction can be effected to the extent of 50%. If the multiplier "16" is applied to the income of the appellant i.e., Rs. 12,000/-, the resultant figure would be Rs. 1,92,000/-. The pain and suffering, in the context of amputation of a leg, is a continuous one unlike where the treatment restores the patient to his earlier position. Added to that, there would be several ailments in future also. The expenditure, which the appellant may have to incur for arrangement of an artificial limb, needs to be treated as part of compensation.

12. In *Rajesh and others v. Rajbir Singh and others* 2013 AJ 1403, the Hon'ble Supreme Court held that irrespective of the claim made by the victim of an accident, the Tribunal itself can undertake verification and award appropriate amount. In the instant case, the evidence was mostly on the basis of the claim of Rs. 1,20,000/-. However, certain undisputed facts can be taken into account, and no amount was awarded by the Tribunal, towards the expenditure incurred for treatment. We are of the view that the compensation of Rs. 2,00,000/-, under all heads, can be granted. The point is, accordingly, answered.

POINT NO. 2:

13. This point is in relation to the extent of liability of the 2nd respondent. The Tribunal treated the appellant as a passenger. However, the evidence on record is to the effect that what was paid by the appellant was for the transport of the goods. Not even a suggestion was made to him to the effect that he paid the fare for traveling in the vehicle. Parliament amended Section 147 of the Motor Vehicles Act, 1988 providing for the coverage of insurance for the persons traveling in goods vehicles along with the goods. Therefore, the view taken by the Tribunal as well as the learned Single Judge, restricting the liability of the 2nd respondent to Rs. 12,500/- cannot be sustained. The point is, accordingly, answered.

14. Hence, we allow the Letters Patent Appeal, enhancing the compensation to Rs. 2,00,000/- (Rupees Two lakhs only) and holding the respondents 1 and 2 liable to pay the entire compensation, jointly and severally. The enhanced compensation amount shall carry interest at 7.5% per annum. The appellant shall be under obligation to pay the Court fee for the enhanced compensation amount. There shall be no order as to costs. The Miscellaneous Petitions, if any, pending in the appeal shall stand disposed of.