(2011) 01 AP CK 0002

Andhra Pradesh High Court

Case No: CMA No. 3271 of 2003

P. Satyam		APPELLANT
	Vs	
Managing Director, APSRTC, Hyderabad		RESPONDENT

Date of Decision: Jan. 27, 2011

Acts Referred:

- Motor Vehicles Act, 1988 - Section 140, 141(3), 142

Citation: (2013) ACJ 2020 : (2012) 1 ALD 672

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

Bench: Single Bench

Advocate: V.S.R. Murthy, for the Appellant;

Judgement

C.V. Nagarjuna Reddy, J.

This civil miscellaneous appeal arises out of judgment dated 8.10.2001 in OP No. 634/1997 on the file of II Additional District Judge, Cuddapah (for short "the Tribunal"). The claimant in the O.P. filed this civil miscellaneous appeal feeling partly aggrieved by the order of the Tribunal whereby his claim for compensation for permanent disability was turned down. Since the appeal is confined to the aspect relating to claim for compensation relating to permanent disability, it is not necessary to refer to and discuss in detail the manner in which the accident has taken place. It will suffice to note that the accident occurred on 19.11.1995 wherein the bus belonging to the respondent has hit the appellant and two others standing near a T.V.S. Suzuki, by the side of a road. The appellant claimed that he has received multiple injuries. He was initially admitted in Government Hospital, Cuddapah and was later shifted to N.I.M.S., Hyderabad where he was treated upto 24.1.1996. It is the case of the appellant that even after his discharge from the N.I.M.S., he was taking treatment from Dr. Vasantha Kumar, Orthopaedic Surgeon who operated on the appellant''s leg once in the month of March 1996 and for the second time in the month of October 1996. It is his further case that his right hand

lost the power of movement and his right leg also has become dysfunctional to a partial extent. The appellant thus pleaded suffering from permanent disability.

2. In support of his plea, the appellant examined himself as PW1 and has examined Dr. B. Someswara Reddy as PW2. The appellant filed Exs. A1 to A22 which include Ex. A2-certified copy of wound certificate, Ex. A4-Salary certificate, Ex. A8-Discharge summary issued by N.I.M.S. Hospital, Exs. A9 and All-Discharge cards issued by Nirmala Hospital, Cuddapah, Ex. A12-Medical certificate issued by Dr. Vasantha Kumar, Ex. A14-Disability certificate issued by the District Medical Board, Cuddapah, Ex. A18 Medical bills numbering 40 issued by the N.I.M.S., for a sum of Rs. 62,120/-, Ex. A19 bills issued by CMC Vellore for Rs. 792/-, Exs. A20-Bills numbering 25 issued by Nirmala Hospital, Cuddapah for a total sum of Rs. 16,227/- and Ex. A21-189 Medical bills for a sum of Rs. 21,581/-.

3. At the hearing Sri V.S.R. Murthy, learned Counsel for the appellant has advanced two contentions, namely, that the Tribunal has committed a serious error in holding that the injuries suffered by the petitioner do not fall within the provisions of Section 142 of the Motor Vehicles Act, 1988 (for short "the Act") to constitute permanent disability and that the Tribunal has unjustly overlooked the various medical bills covered by Ex. A21.

4. Despite service of notice on the respondent, no one entered appearance.

5. As regards the first contention of the learned Counsel, Ex. A2 wound certificate issued by Civil Assistant Surgeon shows that the appellant has suffered the following injuries.

(i) contusion injuries on right arm and elbow region measuring 10 x 5 x 10 cm - limbs bent and bleeding

(ii) right thigh is twisted at lower 1/3rd swelling present.

X-Rays show fracture of right femur, dislocation of right elbow, fracture of lower 1/3rd of right tibia and fracture of upper 1/3rd of pottalla (right).

6. Ex. A8-Discharge summary of N.I.M.S. Hospital shows that the appellant underwent surgical procedures and was advised Physiotherapy and also possible surgeries on later dates. This document further shows that the appellant was admitted on 21.11.1995, was operated on the same date and was discharged on 24.1.1996. Ex. A9-Discharge card of Nirmala Hospital, Cuddapah shows that the appellant was admitted on 7.3.1996 and discharged on 11.3.1996. Ex. A11-another discharge card shows that the appellant was again admitted on 9.9.1996 and discharged on 13.9.1996 from the said Nirmala Hospital. Ex. A14-Disability certificate issued by the District Medical Board, Cuddapah has estimated the partial permanent disability suffered by the appellant at 75%. PW2, the Doctor who is Civil Surgeon of District Headquarters Hospital, Cuddapah and a Member of the Medical Board, deposed that he has examined the appellant for assessment of disability and he

opined that the appellant had "pot traumatic ankylosis of right elbow flexion extension supination, pronation are completely lost, radial medial and ulna nerve paralysis present." He further deposed that "the appellant is not able to flex the hand and fingers. Pinch on grip lost. He had post traumatic stiffness of knee joint due to old fracture of femur and tibia on right side. He is not able to sit and squat or sit in cross-leg position." PW2 assessed the permanent disability suffered by the appellant at 75% and issued Ex. A14-Disability certificate. This evidence was brushed aside by the Tribunal on the ground that the nature of disability suffered by the appellant does not fall within the provisions of Section 142 of the Act.

7. A perusal of the provisions of the Act shows that Chapter-X deals with Liability without fault in certain cases. Section 142 of the Act occurs in the said Chapter. It opens with the words "For the purposes of this Chapter...." Thus, ex-facie, Section 142 of the Act applies to claims made u/s 140 of the Act for claiming no fault liability compensation. Therefore, the Tribunal has committed a patent error in discarding the permanent disability certificate and declining to award any compensation for permanent disability on a wholly erroneous premise that Section 142 of the Act is attracted. Even assuming that the said provisions is attracted, I have no doubt in my mind that the nature of the injuries suffered by the petitioner falls under clause (b) of the said Section, namely, "destruction or permanent impairing of the powers of any member or joint". The Tribunal therefore ought to have assessed the loss of income arising on account of permanent disability suffered by the appellant. Ordinarily, this Court would have remanded the matter to the Tribunal for fresh consideration. But considering the fact that the accident occurred about 16 years back and the litigation is pending since the year 1997, I have decided against this course and instead I have decided to assess and award reasonable compensation under this heard.

8. It is legally well settled that in a case of injuries the claimant is entitled to receive compensation under two heads, viz., pecuniary and non-pecuniary. The pecuniary sub-heads are - (i) Loss of income; (ii) transport to hospital; (iii) attendant charges; (iv) extra diet and nutrition; and (v) medical expenses. Non-pecuniary subheads are - (i) Pain and suffering; (ii) loss of amenities of life; (iii) loss due to reduction in expectation of life; (iv) loss of expectation of marriage; and (v) loss of earning capacity.

9. In order to substantiate his claim for loss of income and earning capacity, the appellant pleaded that on account of his permanent partial disability, he has given up his employment. He has filed Ex. A4-salary certificate to the effect that he was drawing Rs. 3,715/- at the time of accident. However, in his evidence, the appellant deposed that he was drawing Rs. 3,500/- per month. He was aged 40 years at the time of trial, which is the relevant date for fixing the multiplier in cases of injuries. Thus, the multiplier of 14 is relevant.

10. The question then is whether the loss of future income has a direct relation with the percentage of disability. It is trite that all injuries leading to physical disability do not have uniform impact qua the loss of earning power (See: T. Balaiah Vs. Abdul Majeed and another, . The loss of future income depends upon the nature of occupation of the injured. To illustrate, the principle fractures of lower limbs, such as, legs leading to their shortening or some such deformity will permanently deny a driver of a motor vehicle his future source of livelihood; whereas a person employed or in occupation, such as clerical jobs, teaching and other managerial positions, may not suffer much financial loss as such deformity or disability would not have direct bearing on the discharge of their duties. However, in those cases, they are entitled to reasonable compensation towards loss of amenities of life. Similarly, deformity of the hand could affect a carpenter in a much more serious way than a telephone operator. Therefore, the Tribunals need to be judicious in judging the loss of future income with reference to the nature of the injuries and the affect the disability will have on their occupation, rather than merely going by the mathematical formula of applying the percentage of disability directly on the future income as assessed by it.

11. As noted above, though the appellant has pleaded in evidence that he has stopped going to work on account of his physical incapacity, there is no evidence to show that he will not be in a position to undertake any employment in future, Therefore, the entire income assessed for future cannot be treated as loss of income. In my opinion, on account of permanent partial disability suffered by the appellant, his efficiency is bound to come down and even if he undertakes employment in future, he will not be in a position to earn the same salary as he would have earned, but for the disability. Therefore, it would be reasonable to assess the loss of income at Rs. 1,00,000/- on account of his reduced efficiency. This amount does not include the sum of Rs. 10,000/- awarded by the Tribunal towards loss of income on account of injuries.

12. Coming to the medical expenditure incurred by the appellant, as rightly submitted by the learned Counsel for the appellant, the Tribunal has considered only Ex. A21 and ignored other medical bills, namely, Exs. A18- and A20. They show that the appellant has incurred Rs. 62,120/- + Rs. 16,227/-, respectively. However, taking into consideration the facts and circumstances I feel that ends of justice would be met if a further sum of Rs. 50,000/- is awarded towards medical expenses. The amount of Rs. 1,50,000/- under the above two heads is in addition to the sum of Rs. 66,580/- awarded by the Tribunal under various heads.

13. The learned Counsel for the appellant fairly submitted that the Tribunal has not deducted the amount of Rs. 25,000/- paid under no fault liability. In view of the provisions of Section 141(3)(a) of the Act, this amount needs to be deducted from the total compensation. The award of the Tribunal is accordingly modified to the extent indicated above and the civil miscellaneous appeal is partly allowed. The enhanced compensation shall carry interest @ 7.5% per annum from the date of

award till date of payment.