HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 1726 of 2010

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988, by the appellant-claimant aggrieved by the Order and Decree dated 09.04.2010 passed in O.P.No.2499 of 2008 by the Motor Accident Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad, awarding compensation of Rs.2,00,000/- on account of the injuries suffered by the claimant in a motor vehicle accident, as against the claim of Rs.13,00,000/-.

2. Brief facts of the case are that on 27.02.2008, at about 10:00 AM, while the petitioner and his wife were proceeding from JNTU to Malaysian Township on their motorcycle bearing No.AP24M4373 and reached near Mysore Bank, a car bearing No. AP 37TV 4118, driven by its driver in a rash and negligent manner, dashed the motorcycle of the petitioner. As a result, the petitioner sustained grievous injuries and was hospitalized. Alleging that the accident occurred due to rash and negligent driving by the driver of the car bearing No.AP 37TV 4118, the petitioner, who was aged about 30 years and a software engineer by profession and earning around Rs.70,000/- per month, filed the claim petition under Section 173 of the Motor Vehicles Act, 1988 claiming compensation of Rs.13,00,000/- against respondents 1 and 2, the owner and insurer, of the offending car.

3. The 1st respondent-owner of the offending car had remained *ex parte.* The 2nd respondent-insurer filed its counter denying the liability and contending that the claim of the petitioner is excessive. The Tribunal, held that the accident occurred due to the rash and negligent driving by the driver of the offending car and awarded compensation of Rs.2,00,000/- with interest at 6% against respondents 1 and 2. Seeking enhancement of compensation, the appellant-claimant filed this appeal.

4. The point for consideration in this appeal is whether the appellant is entitled for enhancement of compensation.

5. Heard the arguments of Sri K. Hari Mohan Reddy, learned counsel for appellant, Sri P. Harinath Gupta, learned counsel for the respondent-insurance company.

6. Learned counsel for the appellant contended that the compensation awarded by the Tribunal is inadequate. He further contended that Tribunal has not taken into consideration the permanent disability of 25% suffered by the appellant and has not adopted multiplier method for awarding compensation.

7. The Tribunal has not appreciated the medical evidence properly in this case in respect of the injuries suffered by the appellant. It is the case of the appellant that he suffered 25% disability due to the injuries sustained by him. Ex.A3 is the Injury Certificate which reveals that he suffered two simple injuries and two grievous injuries. The two grievous injuries are (i) fracture of lower end humerous, and (ii) fracture of radius styloid. Ex.A3 reveals that he was advised to undergo surgery.

8. The appellant got himself examined as PW1 and deposed about the injuries suffered by him and the nature of treatment undergone by him. He has also stated that he was working as Software Engineer at TCS Consultancy and drawing a salary of Rs.70,000/- per month and because of the injuries he had undergone severe pain and suffering and also mental agony.

9. PW2 is the medical officer who was a Consultant at Sigma Hospitals and Sai Specialty Clinics. His testimony reveals that he has issued Ex.A6-Disability Certificate which shows that the appellant has suffered permanent and partial disability of 25%. It is also his testimony that there was mal-united fracture at the lower end of right humerus with stiffness and limitation of movements in the right elbow with deformity and he is unable to straighten his right elbow. He also

stated that he has advised the appellant to undergo further surgery to remove the implants from his right elbow and it may cost Rs.25,000/- to Rs.30,000/-.

10. The Tribunal has awarded only Rs.2,00,000/- on account of the injuries sustained by the appellant and the treatment undergone by him.

11. The Tribunal no doubt did not discredit the evidence of PW2 medical officer and the disability of 25% assessed by him. The insurer also did not bring any evidence to show that the appellant did not suffer 25% disability because of the injuries sustained by him in the accident. Therefore, there is ample evidence on record to show that the appellant suffered 25% disability and he is entitled to claim compensation.

12. The medical officer PW2 has assessed the disability at 25% considering the nature of injuries. Even if it is presumed that the medical officer has issued excess percentage of disability, the Tribunal has not taken into consideration the functional disability suffered by the appellant. Therefore, it is appropriate to consider the 25% disability as the disability suffered by the appellant in this case.

13. PW3 who is the employer of the appellant has deposed that the appellant was paid total salary without any deductions during the period of treatment. He also deposed that the appellant got his medical bills reimbursed by New India Assurance Company Limited, New Delhi. The Tribunal observing that the appellant got his medical bills reimbursed, however, granted an amount of Rs.50,000/- towards loss of past earnings on the ground that the appellant has undergone prolonged treatment for his injuries by spending his leave. In my view, the observation of the Tribunal with regard to the medical bills and the loss of past earnings does not require any interference.

14. The Tribunal has awarded a lumpsum of Rs.1,50,000/- towards the injuries suffered by the appellant, which is on higher side. The appellant suffered two grievous injuries and two simple injuries. Considering the evidence of PW2-

medical officer, I deem it appropriate to award Rs.50,000/-towards two grievous injuries.

15. The Tribunal did not award any amount towards loss of future earnings on the ground that the appellant did not lose his job. It is, therefore, clear that the Tribunal has not taken into consideration the 25% partial permanent disability suffered by the appellant.

16. The appellant is a software engineer working in a private concern. He filed Ex.A8-Pay Slip wherein his pay details are shown as under:

__Earnings:__

Basic salary	-	*Rs.18,000/-*
Conveyance Non Taxable	-	*Rs.800/-*
House Rent Allowance	-	*Rs.9,000/-*
Sundry Medical	-	*Rs.1,250/-*
Leave Travel Allowance	-	*Rs.1,500/-*
Personal Allowance	-	*Rs.3,350/-*
Variable Allowance	-	*Rs.31,000/-*
Vehicle Maintenance	-	*Rs.1,500/-*

__Deductions:__

Provident Fund	-	*Rs.2,160/-*
Professional Tax	-	*Rs.200/-*

17. Learned counsel for the appellant relied upon the judgment of the Hon'ble Supreme Court in National Insurance Co. Ltd., v. Indira Srivastava and others[1] and contended that the Tribunal had awarded inadequate compensation and therefore sought for enhancement of compensation.

18. In Indira Srivastava (1 supra), the Hon'ble Supreme Court while discussing the connotation of the term "income" for the purpose of determining just compensation, held as under:

> *"13. …. Income tax, professional tax which are deducted from the salaried person goes to the coffers of the government under specific head and there is no return. Whereas, the general provident fund, special provident fund and L.I.C., contribution are amounts paid under specific heads and the contribution is*

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[1] 2008 ACJ 614

always repayable to an employee at the time of voluntary retirement, death or for any other reason."

"14. "….. So far as house rent allowance is concerned, it is beneficial to the entire family of the deceased during his tenure, but due to his untimely death the claimants are deprived of such a benefit which they would have enjoyed if the deceased is alive. On the other hand, allowances like travelling allowance, allowance for newspapers/ periodicals, telephone, servant, club-fee, car maintenance, etc., by virtue of his vocation, need not be included in the salary while computing the net earnings of the deceased.

19. In Indira Srivastava (1 supra), the apex Court referred to the judgment rendered in Tamil Nadu State Trans. Corpn. Ltd. v. S. Rajapriya[2], wherein it was held as under:

"(8) But the assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables, e.g., the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependents during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that deceased might have got better employment or income or might have lost his employment or income altogether.

20. Keeping in view the ratio laid down by the Hon'ble Supreme Court in Rajapriya (2 supra), and also in a catena of decisions, with regard to estimation of future loss of earnings, keeping in view that the appellant is an employee in a private concern wherein consistency in quantum of salary and various other allowances and perks would depend on his continuation in employment, in addition to several variable and imponderables as observed in Rajapriya (2 supra), this Court is of the considered view that it would meet the ends of justice if the appellant's Basic Salary (Rs.18,000/-), House Rent Allowance (Rs.9,000/-) and Contribution to Provident Fund (Rs.2,160/-) are taken as income for the purpose of estimating future loss of earnings.

21. Therefore, taking into consideration the income of the appellant at Rs.29,160/- per month, his annual income would come to Rs.3,49,920/-. The

[2] 2005 ACJ 1441 (SC)

appellant was aged about 30 years by the date of accident, and has suffered 25% partial permanent disability. Therefore, as per Sarla Verma v. Delhi Transport Corporation[3], the multiplier applicable for his age is '17'. Therefore, applying multiplier '17', the loss of future earnings would be Rs.14,87,160/- (i.e., 25% of Rs.3,49,920 x 17).

22. On consideration of the evidence available on record, the order passed by the Tribunal is modified, and the compensation is enhanced as shown in the following tabular format.

S.No	Head	Compensation awarded by the Tribunal	Compensation enhanced / modified
1.	For two Grievous injuries	Rs.1,50,000/-	Rs.50,000/-
2.	Loss of past earnings	Rs.50,000/-	Rs.50,000/-
3.	Loss of future earnings	-	Rs.14,87,000/-
		Rs.2,00,000/-	Rs.15,87,010/-

23. IN THE RESULT, the appeal is allowed, by enhancing the compensation of Rs.2,00,000/- awarded by the Tribunal to Rs.15,87,010/-, with proportionate costs and interest at 7.5% per annum from the date of petition till realization. The respondent-insurance company is directed to deposit the compensation amount within two months from the date of receipt of a copy of this order. The appellant shall pay Court fee on the compensation awarded over and above the compensation claimed in the original petition. No order as to costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

14th July, 2017

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[3] 2009 (6) SCC 121

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