

HON'BLE SRI JUSTICE M.S.K.JAI SWAL

M.A.C.M.A.No.1287 of 2010

JUDGMENT:

The appeal is preferred by the claimant in M.V.O.P.No.104 of 2005 on the file of the learned Chairman, Motor Accident Claims Tribunal-cum-District Judge, Chittoor (for short "the Tribunal), being aggrieved by the award, dated 07.07.2010, by and under which, the Tribunal awarded a sum of Rs.2,66,309/- as against the claim of Rs.12,00,000/- for the injuries sustained by him in the accident that took place on 22.05.2004 at 5 p.m while the appellant was proceeding on his Hero Honda Splendor Motorcycle from Kanipakam.

The brief case of the claimant is that on 22.05.2004 the claimant while proceeding on his Hero Honda Splendor motorcycle on the left side of the road to go to Kanipakam village to meet his father and when he reached near Sai Samrat Hotel on Kanipakam road, at about 5 p.m., the lorry bearing registration No.TN-25-X-8325 came in opposite direction in a rash and negligent manner on wrong side of the road and dashed against the motorcycle of the injured, due to which, the injured fell down and sustained severe injuries to his head, chest and fractures to his right femur and right clavicle. The injured underwent treatment for a period of 1½ months and spent a sum of Rs.6,00,000/- towards medical expenses. The claimant was aged 20 years, studying final year B.Sc at the time of accident. The 1st respondent is the owner of the offending vehicle and the 2nd respondent is the insurer.

The respondent/Insurance Company filed the counter denying its liability. It is further contended that the driver of the offending vehicle had no valid driving licence and the owner of the offending vehicle has violated

the terms and conditions of the policy and hence the insurance is not liable to pay compensation.

On behalf of the claimant, P.Ws.1 to 5 were examined and got marked Exs.A.1 to A.18. On behalf of the respondents, no oral evidence was adduced, but the insurance policy was marked as Ex.B1 and the statement of account issued by CMC Hospital, Vellore was marked as Ex.C1.

According to the claimant, he sustained multiple grievous injuries in the accident on the date, time and place mentioned by him. Further more, the fact that the accident took place due to rash and negligent driving on the part of the driver of the offending lorry is not disputed. The only claim of the appellant is that the Tribunal erred in awarding a meager compensation of Rs.2,66,309/- in spite of the fact that the claimant, a student of aged 21 years suffered multiple injuries and also suffered disability in the range of 30-35%, and therefore, the compensation awarded by the Tribunal is liable to be enhanced.

The learned counsel for the insurance company submits that the quantum of award of the Tribunal by itself is erroneous and excessive for the reason that the multiplier adopted by the Tribunal at 18.90 is incorrect and the amount so granted by the Tribunal cannot be sustained. The learned counsel further submits that as per the decision of the Supreme Court in *Sarla Verma v DTC*¹ the appropriate multiplier to be applied for ascertaining the quantum of compensation in respect of persons between age group of 21-25 years is '18', but not more than '18'. It is no doubt true that the appropriate multiplier to be applied is '18', but the said issue cannot be taken into consideration in the absence of there being any appeal challenging the multiplier adopted by the Tribunal.

¹ (2009) 6 SCC 121

The claimant who examined himself as PW 1 deposed about the accident and the manner in which it took place. He was admitted in Vellore hospital and surgeries were performed. Admittedly, the appellant/claimant sustained one fracture of left humerus with radial nerve injury. For this injury a sum of Rs.5,000/- was awarded by the Tribunal. Though the claimant claimed to have spent more than Rs.6,00,000/- towards his treatment, no evidence whatsoever was produced in that aspect and hence, the Tribunal taking into consideration the oral and documentary evidence produced by the claimant, awarded a sum of Rs.1,67,084/- towards medical expenses. The Tribunal also took into consideration the fact that the injured was a student and since he was not an earning member, his notional income was taken as Rs.15,000/- per year and calculated the disability and arrived at a sum of Rs.99,225/- towards disability suffered by him. The amount awarded by the Tribunal under this head and medical expenses cannot be said in any way erroneous.

It is however noticed from the order of the Tribunal that the Tribunal did not award any amount towards pain and suffering, transportation and extra nourishment.

In addition to the compensation amount granted by the Tribunal, the appellant/injured can be awarded a sum of Rs.20,000/- towards pain and suffering and Rs.7,000/- each towards extra-nourishment and transport charges, totaling Rs.34,000/-. Subject to this modification, this appeal can be allowed in part.

In the result, the appeal is partly allowed enhancing the compensation from Rs.2,66,309/- to Rs.3,00,309/- (Rupees three lakh and three hundred nine only) to the claimant payable by respondents No.1 and 2 jointly and severally with interest at 7.5% per annum from the date of petition till the date of realization together with proportionate costs, which shall be deposited

within a period of two months from today. The claimant is entitled to withdraw the entire amount, as and when deposited, without furnishing any security.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

M.S.K.JAI SWAL, J

Date: 29th June, 2017
Dsr

