

THE HON'BLE MS.JUSTICE J.UMA DEVI

M.A.C.M.A.NO.2337 OF 2005

ORDER:

The order, dated 05-11-2002, passed by the Chairman, Accident Claims Tribunal-cum-Addl. Special Judge SPE & ACB cases-V Addl. Chief Judge, City Civil Court, Hyderabad (for brevity 'the Tribunal'), in O.P.No.1478 of 1999 is assailed by the claimant in the above O.P. contending that he has not been awarded with the fair and reasonable compensation.

2. The case of the appellant/claimant (petitioner in O.P.1478 of 1999) is briefly stated as follows:

That on 24-06-1999 at 4.00 P.M. while the petitioner was coming to Hyderabad from Achampet in a jeep bearing No. AP 22 D 3340, the jeep turtled near Nadinpally gate, Achampet, due to negligent driving of it by its driver. In the above said accident, the petitioner sustained grievous injury. The petitioner laid a claim as against the owner and the insurer of the aforesaid jeep for a sum of Rs.2,50,000/- as he sustained injuries in the accident on 24-06-1999, which occurred due to negligent driving of the said jeep by its driver.

3. The Tribunal framed the following points for consideration:

1. Whether the accident in question took place on 24-06-1999 at about 4.00 p.m. due to rash and negligent driving of the jeep bearing No. AP 22 D 3340?
2. Whether the petitioner is entitled for compensation, for the injuries sustained by him, if so, what amount and from whom?
3. To what relief?

4. The Tribunal relying on the evidence given by the petitioner/claimant and other material documents such as F.I.R., charge sheet, rough sketch of scene of offence, wound certificate and disability certificate of the petitioner

held that the accident in question occurred due to rash and negligent driving of the jeep bearing No. AP 22 D 3340 by its driver and accordingly held that the owner and insurer are liable to pay compensation to him.

5. The appeal is contested by the 2nd respondent in O.P.No.1478 of 1999/Insurance Company.

6. The main contention of the appellant/claimant is that he is a driver by profession. The Tribunal without taking into consideration of the evidence given by him, has assessed loss of income by wrongly assessing his monthly income at Rs.1500/- per month. In one of the cases when a claim was laid in respect of accidental death of a non earning member, the Apex Court had taken a view that fixing the income at Rs.3,000/- per month is reasonable. Applying the same principle, the Tribunal, the Tribunal ought to have allowed the claim made by the claimant for a sum of Rs.2,50,000/-. The claimants further contended that the Tribunal has not awarded any compensation under the head of loss of enjoyment of life and loss of future prospects etc., Though the substantial material is there in the record to believe that the claimant was getting income of Rs.3,000/- per month by working as a driver apart from daily batta of Rs.100/- , the Tribunal has wrongly assessed the income at Rs.1,500/- per month. The Tribunal has not recorded any valid reasons to discard his testimony, which is clear and categoric so far as the income he was getting as driver. These are the main grounds urged by the appellant to question the order passed by the Tribunal, dated 05-11-2002.

7. The learned counsel for the 2nd respondent-Insurance Company while making his reply submissions contended that well reasoned order is passed by the

Tribunal by assessing the monthly income of the appellant at Rs.1500/-. No substantial evidence was adduced by the appellant for establishing his monthly earning as driver. The Tribunal passed the award granting compensation of Rs.1,51,800/-. The order passed by the Tribunal needs no interference by this Court.

8. Perused the order, dated 05-11-2002 passed by the Tribunal. The appellant herein is the claimant in O.P.No.1478 of 1999. The main contention of the appellant is that no adequate or reasonable compensation is awarded to him by the Tribunal taking into consideration of his testimony that he was getting salary of Rs.3,000/- per month apart from daily batta of Rs.100/-. Though no substantial evidence is produced by the 2nd respondent to discard his testimony, the Tribunal has wrongly assessed his income at Rs.1500/- per month and no valid reasons are recorded by the Tribunal to discard his testimony. This being the main contention of the appellant, there is a need to evaluate the evidence given by him before the Tribunal. The appellant has deposed that he was getting income of Rs.3,000/- per month by working as driver and was getting daily batta of Rs.100/-. The appellant has not produced driving licence. The reasons for non production of the driving licence is clearly stated in his evidence. It is deposed by him that he could not able to produce driving licence as he lost it. The respondents have not denied or disputed the occupation of the appellant. The fact that the appellant has become disable permanently on account of injuries sustained by him to his left hand has not been denied or disputed by the respondent. The evidence of P.W.2-Dr.K.Rajaratnam, Orthopedic Surgeon, District Head Quarters Hospital, Ranga Reddy is clear and categorical on the aspect of disability attained by the appellant due to

injury he received to the left hand in the accident that occurred on 24-06-1999. P.W.2 was the doctor who examined the appellant and noticed that his left hand is not functioning completely and there is no blood circulation to it. The extent of disability suffered by the appellant as deposed by P.W.2 is at 30%. The medical certificate-Ex.A4 and the disability certificate issued by the Medical Board, Mahaboobnagar, contain the photographs of the appellant where the disability is assessed at 30% and the same has not been disproved by the respondent. The Tribunal instead of taking the income of the appellant at Rs.3,000/- per month by applying the authoritative pronouncement made by the apex Court in case of **LATHA WADHWA AND OTHERS V STATE OF BIHAR AND OTHERS**¹, where the income of a non earning member is assessed at Rs.3,000/- per month, has assessed the income of the appellant at Rs.1500/- per month and the income so assessed is contrary to the evidence available in the case record. The Tribunal has not assigned any reasons to discard the testimony of P.W.1, who during the course of examination has deposed in clear and categorical terms that he was being paid salary of Rs.3,000/- per month by his owner for working under him as a driver apart from his daily batta of Rs.100/-. Upon consideration of evidence of P.W.1, the Tribunal ought to have assessed his income at Rs.3,000/- per month. If the income of the appellant is taken at Rs.3,000/- per month, the loss of income due to disability of 30% comes to Rs.1,83,600/- by applying multiplier 17 (since the appellant was aged about 25 years by the date of accident) (i.e., Rs.3,000/- X 12 X 17 X 30%),. So far as the amount awarded by the Tribunal under the head of medical expenditure, pain and suffering and loss of amenities in life is concerned, the appellant has got no grievance. If the

¹ (2001) 8 SCC 197

amount awarded by the Tribunal under the above heads is added to the amount awarded by this Court to the appellant, the appellant gets total compensation of Rs.2,43,600/- (Rs.1,83,600/- + Rs.40,000/- + Rs.10,000/- + Rs.10,000/-). It is rightly contended by the appellant that no amount is awarded under the head of loss of enjoyment of life and future prospects etc., The appellant gets more than Rs.2,50,000/- if some more amounts are awarded under the above heads. The Tribunal ought to have allowed the claim made by the appellant in toto instead of awarding compensation of Rs.1,51,800/-.

9. In the light of the discussion held above, this Court is of the opinion that the appellant/claimant is entitled to get compensation of Rs.2,50,000/-.

10. Accordingly, this appeal is allowed enhancing the compensation amount to Rs.2,50,000/- from Rs.1,51,800/-. The enhanced compensation amount carries interest at 7.5% per annum from the date of filing of the petition till realization. No order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

J.UMA DEVI, J

DATED: 21ST DAY OF APRIL, 2017.
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