

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

M.A.C.M.A.NO.1241 OF 2007

ORDER

The appellant is the claimant/injured. Aggrieved by the order and decree dated 11.08.2006 passed by the Motor Accidents Claims Tribunal cum (IV Additional District and Sessions Judge, Fast Tract Court, Rangareddy District), in O.P.No.687 of 2002, the present appeal is filed seeking enhancement of compensation awarded.

Heard both sides and perused the record.

Brief facts of the case that on 29.5.2002 at about 5 p.m., while the appellant was proceeding on his motor cycle bearing No. AP 28AA 5903 to go to Miyapur and that when he reached near Bachupally Chowrastha, lorry bearing No. UP 77A 5060 came in high speed, in a rash and negligent manner and dashed the appellant. Due to which, he fell down on the road, sustained grievous injuries and fracture to his left ankle, fracture on L2 and L4 vertebra (spinal card) and injuries on both kidneys. Immediately, he was shifted to Remedy Hospital, Kukatpally, wherein he was treated as inpatient for 2 days. Thereafter, he was shifted to Christian Medical College and Hospital, Vellore, Chennai State, wherein he was treated as inpatient from 1.6.2002 to 18.6.2002. Thereafter, he attended St. Theresa Hospital, Sananthnagar, Hyderabad for follow up treatment and spent huge amounts towards treatment and transport charges. Due to the fracture of spinal card, he is unable to move from the bed and due to fracture to his left leg, he is unable to move and walk.

It is stated that as on the date of accident, the claimant is aged 25 years and a businessman, proprietor of Ashwini Enterprises (Furniture and Household items) and authorized agent of Professional Courier Agency, situated at Miyapur and earning an amount of Rs.10,000/- per month. The police Dundigal registered a case in Cr.No.46/02 against the lorry driver.

With these averments, the claimant filed the claim petition under 166 of Motor Vehicles Act, 1988 claiming compensation of Rs.4,00,000/-.

The owner of the vehicle remained ex parte. The insurance company filed counter affidavit and denied the averments made in the claim petition and sought for its dismissal.

Based on the above pleadings, the trial court framed the following issues for trial:

1. Whether the accident took place on 29.5.2002 at about 5.00 p.m. near Bachpally Chowrasta, R.R. District on account of the rash and negligence of the driver of the lorry bearing No. UP 77A 5060 which dashed the cycle motor bearing No. AP 28AA 5903?
2. Whether the petitioner is entitled to claim compensation and if so, for how much amount?
3. To what relief?

To prove his case, the claimant examined himself as P.W.1 and got marked Exs.A-1 to A-9 and he also got examined the doctors who treated him, as P.Ws.2 and 3. On behalf of the respondents, the insurance company got marked the copy of the policy as Ex.B-1 and led no oral evidence.

The trial court taking into consideration the evidence of claimant, medical records, contents of Ex.A-1, certified copy of FIR and Ex.A-2 charge sheet,

recorded finding of fact that the accident occurred due to rash and negligent driving of the driver of the lorry bearing No. UP 7AA 5060 on 29.5.2002 at 5 p.m. near Bachupally Chowrastha and that the claimant received injuries in the said accident. The Trial court found that the claimant was aged 25 years. Further considering the evidence of record, the trial court found that the petitioner suffered 25 to 30% disability and taking the income of the petitioner at Rs.2,500/- per month and annual earnings at 30,000/- per annum, applying the multiplier of 17 as per second schedule to Section 163-A, arrived at Rs.5,10,000/- and applying the disability at 25 to 30 per cent, awarded the loss of future earnings at Rs.1,40,000/-. The trial court also awarded Rs.50,000/- towards pain and suffering, Rs.36,000/- towards medical expenditure at Remedy Hospital, Kukatpally, Christian Medical College and Hospital, Vellore, Chennai and St' Theresa Hospital, Sanathnagar, Hyderabad and Rs.15,000/- towards Ayurvedic treatment; Rs.8,000/- towards transportation charges and; Rs.5,000/- towards extra nourishment. Thus, in all the Tribunal awarded a sum of Rs.2,54,000/- with interest at the rate of 7.5 per cent per annum from the date of petition i.e., 19.8.2002 till the date of payment. The trial court held that insured and insurer are jointly and severally liable to pay the compensation.

Not being satisfied with the compensation awarded by the Tribunal, the claimant filed the present appeal.

The owner of the vehicle remained ex parte before the trial court. As per the judgment of the Division Bench of this court in **MEKA CHAKRA RAO v.**

YELUBANDI BABU RAO @ REDDEMMA AND OTHERS¹ dismissal of the appeal for default against the owner of the vehicle is of no consequence to decide the quantum of compensation.

The learned counsel appearing for the appellant vehemently contended that the trial court granted Rs.2,54,000/-, which is very meager vis-à-vis the injuries sustained by the appellant. He stated that the appellant sustained fracture to his left leg and fracture to L2 and L4 vertebra (spinal cord) and at the first instance taken treatment at Remedy Hospital and thereafter to Christian Medical College and Hospital, Vellore, Chennai and thereafter he has taken treatment at Kerala. As per the medical evidence of P.Ws.2 and 3, who treated the claimant, he sustained disability at 25 to 30 per cent. He further stated that the appellant was dealing in furniture business and earning an amount of Rs.10,000/- to Rs.15,000/- per month, but the Tribunal has taken only an amount of Rs.2,500/- per month, which is very meager. The learned counsel brought to the notice of this court the income tax returns filed by the claimant for the year 2004-05, which was marked as Ex.A-8. The learned counsel for the appellant further contended that the court below also granted meager amounts under other heads and sought for enhancement of compensation.

On the other hand, the learned counsel for the contesting respondent No.2 – Insurance company, supporting the impugned order stated that the trial court after considering the evidence on record granted just and reasonable amount and that there are no grounds to interfere with the same and prayed for dismissal of the appeal.

¹ 2001(1) ALT 495 (DB)

In view of the above contentions, the point that arises for my consideration is whether the claimant is entitled for enhancement of compensation?

There is no dispute that the accident caused due to rash and negligent driving of the driver of the crime lorry and the claimant sustained injuries. As per the case of the claimant, immediately he was shifted to Remedy Hospital, where he was treated for one day and, thereafter shifted to Christian Medical College and Hospital, Vellore, Chennai for treatment. There, he was inpatient from 1.6.2002 to 18.6.2002 and thereafter he has taken Ayurvedic treatment at Kerala State. To substantiate his claim, the claimant produced Exs.A-3 to A-7, which are the wound certificate, medical record issued by the Remedy Hospital and case summary and discharge record, issued by Christian Medical College and Hospital, Vellore, Chennai. The said records reveals that the petitioner was admitted on 1.6.2002 and discharged on 18.6.2002 and he sustained abrasion of left ankle with un-displaced fracture medial malleolus and compression fracture of L2 and L4 Vertebra and was treated by plaster cast and dressing i.e., conservatively. P.W.2, is the doctor who treated the claimant at Christian Medical college and Hospital, Vellore, Chennai and he deposed that the claimant sustained 20 to 30 per cent disability. The trial court has taken the disability between 25 to 30 per cent and accordingly arriving at loss of earnings. In my considered view, having regard to the nature of injuries and medical evidence, the disability can be taken at 27.5 per cent, to meet the ends of justice.

Coming to the earnings of the claimant, it could be seen that he is aged 25 years, dealing in furniture business and he also filed his income tax returns

marked as Ex.A-8. Ex.A-8 relates to subsequent earning of the claimant, cannot be ignored. In view of the judgment rendered by the Apex Court in **SMT. SARALA VARMA vs. DELHI TRANSPORT CORPORATION**², and the facts and circumstances, I am of the view that the income taken by the trial court at Rs.2,500/- per month, is on the lower side and it can safely be taken at Rs.3,000/- per month and on this count alone, the petitioner is entitled for enhancement of compensation.

With regard to grant of compensation under other heads, which are noted above, based on facts and circumstances, it is just and reasonable and warrants no interference.

The income of the claimant is taken at Rs.3,000/- per month and Rs.36,000/- per annum. As per the medical record, he is aged 25 years. In view of the judgment of the Apex Court in Sarla Varma case (supra), the appropriate multiplier for the age of the claimant, would be 17. The loss of earnings of the claimant would be Rs.6,12,000/- (Rs.36,000/- x 17). The disability suffered by him as per the evidence of P.W.2, is taken at 27.5 per cent and accordingly the loss of earnings comes to Rs.1,68,300/- and the same is rounded to Rs.1,70,000/-. The claimant is entitled for a sum of Rs.1,70,000/- towards loss of earnings.

In the result, the claimant is entitled to Rs.2,84,000/- (Rs.50,000/- + 36,000/- + 15,000/- + 8,000/- + 5,000/- + 1,70,000/- = Rs.2,84,000/-) with interest at the rate of 7.5 per cent per annum from the date of the petition till date of

² (2009)6 SCC 121

realization, instead of Rs.2,54,000/-. On deposit of the amount, the claimant is permitted to withdraw the entire compensation.

The appeal is accordingly allowed in part. No order as to costs.

Miscellaneous petitions pending if any, shall stand closed.

DR. SHAMEEM AKTHER,J

DATE:27—06—2017
AVS

