HON'BLE SMT. JUSTICE T. RAJANI

M.A.C.M.A. No.150 of 2008

JUDGMENT :

This Civil Miscellaneous Appeal, under Section 173 of the Motor Vehicles Act, 1988 is preferred by the appellant/petitioner assailing the order and decree dated 30.10.2007 in O.P.No.603 of 2005 passed by the Chairman, Motor Accidents Claims Tribunal-cum-V Additional District Judge, Karimnagar, Karimnagar District (for brevity "the Tribunal"), on the grounds that the Tribunal has granted a meager amount under all heads and that it has not considered the disability sustained by the appellant/petitioner on account of fracture to the spinal cord, dislocation of right fore arm and right rib, that while assessing the loss of earnings, the Tribunal has taken income of the appellant/petitioner as Rs.1,500/- per month only contrary to the evidence of P.Ws.1 and 2 that he is earning about Rs.3,000/- per month, which is very low, that the Tribunal erred in taking the permanent partial disability sustained by the appellant/petitioner as 20% only, despite the evidence of P.W.3 – Doctor, who issued the Disability Certificate stating that he sustained 75% permanent partial disability, that the Tribunal erred in granting only Rs.1,000/- towards transportation charges and Rs.500/- towards extra nourishment, which are very low, that the Tribunal awarded

Rs.10,000/- only towards medicines as against the claim of Rs.30,000/- incurred by the appellant/petitioner and hence sought for allowing the appeal.

2. Heard the arguments of the learned counsel for appellant/petitioner as well as Sri Ravi Shankar Jandhyala, learned Standing Counsel for the 3rd respondent – National Insurance Company Limited and perused the material on record.

3. Learned counsel for the appellant/petitioner contended that while assessing the loss of earnings, the Tribunal ought to have taken a minimum of Rs.3,000/- per month as the income of the appellant/petitioner, but it has taken only Rs.1,500/- per month, which is contrary to the evidence on record and by considering the loss of income during the period of treatment and rest, the Tribunal calculated the loss of earnings as Rs.9,000/- @ Rs.1,500/- per month for six months. The said period of six months was not disputed by the learned Standing Counsel for the 3rd respondent – insurer, either at the stage of claim petition or at the stage of appeal.

4. Taking any avocation, in the least, this Court is of the opinion that Rs.3,000/- per month would be the income of a person. Therefore, in addition to the amount of Rs.9,000/- awarded by the Tribunal, another sum of Rs.9,000/- is

awarded to the appellant/petitioner towards loss of income during the period of treatment and rest.

5. The Tribunal also awarded only Rs.1,000/- towards transportation charges and Rs.500/- towards extra nourishment. Since the appellant/petitioner sustained injury to his spinal cord, besides other injuries, this Court is of the opinion that he might have required special transportation while going to and from the Hospital. Therefore, another sum of Rs.5,000/- is granted towards transportation. Since there is no evidence with regard to extra nourishment, the amount awarded by the Tribunal is not interfered with. Even with regard to the medical expenses, though the appellant/petitioner claimed Rs.30,000/- towards medicines, a perusal of Ex.A.5 – Bunch of Medical Bills shows that he incurred only Rs.10,000/- towards medicines, which was rightly awarded by the Tribunal and hence the same needs no interference.

6. Though the learned counsel for the appellant/petitioner strenuously contended that the amount of Rs.10,000/- awarded by the Tribunal towards pain and suffering is very low and it ought to have awarded more amount towards the said head, learned Standing Counsel for the 3rd respondent – insurer resisted the same by contending that the claim made by the appellant/petitioner is only Rs.10,000/- and hence the Tribunal has rightly awarded the amount to the extent of

claim only. This Court is of the opinion that when there is a specific claim made under a particular head, which was awarded, the appellant/petitioner cannot again be allowed to argue that the Tribunal was erroneous in awarding only the amount claimed under that head.

7. Regarding the disability, the Tribunal took only 20%, as against 75% permanent partial disability sustained by the appellant/petitioner as per the evidence of P.W.3 – Doctor, who examined him and issued Ex.A.7 Disability Certificate. However, neither the evidence of P.W.3 nor Ex.A.7 Disability Certificate explains the nature of disability sustained by the appellant/petitioner. Though it is the contention of the learned counsel for appellant/petitioner that the appellant/petitioner is totally disabled and the evidence of P.W.2, who is his wife, also discloses the same, evidence of P.W.2, who is an interested witness, cannot be taken as a basis to sustain the same. Therefore, in the absence of any clarity regarding the nature and extent of disability sustained by the appellant/petitioner and in the light of evidence of P.W.3 and also in view of inconsistency with regard to the effect of disability on the avocation, caused due to the injuries sustained by the appellant/petitioner to the spinal cord and other organs, this Court is of the opinion that it is just and equitable to take 50% disability affecting the future income of the appellant/petitioner. There is no dispute with regard to

the multiplier '15' applied by the Tribunal. Therefore, 50% of the loss of disability comes to Rs.1,500/- per month and Rs.18,000/- per annum, the same when multiplied by applying the appropriate multiplier '15', comes to Rs.2,70,000/-.

8. In all, the Award of the Tribunal stands enhanced by (Rs.3,14,500/- - Rs.84,500/-) Rs.2,30,000/- (Rupees two lakhs thirty thousand only). The Award shall relate back to the date of the decree and would carry the same rate of interest as was awarded by the Tribunal.

9. Accordingly, the Civil Miscellaneous Appeal is allowed in part enhancing the compensation amount from Rs.84,500/- to Rs.3,14,500/- (Rupees three lakhs fourteen thousand five hundred only) with interest @ 7.5% per annum from the date of the petition till the date of realization. In all other aspects, the order of the Tribunal shall remain unaltered. Proportionate costs are ordered.

10. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

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JUSTICE T. RAJANI

06.03.2017.
Msr

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