

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
THE HON' BLE SRI JUSTICE N. BALAYOGI

M.A.C.M.A.No. 1728 of 2006

JUDGMENT:

Questioning the award dated 06.05.2006 passed in M.V.O.P.No.2279 of 2001 on the file of the V Additional Metropolitan Sessions Judge, Mahila Court-cum-XIX Additional Chief Judge, City Criminal Courts, Hyderabad, the present appeal came to be filed under Section 173 of the Motor Vehicles Act, 1988 (for short "the act").

For the sake of convenience, the parties will hereinafter be referred to as arrayed in the O.P.

The circumstances which lead to filing of the appeal are as under:

The petitioner/claimant met with an accident while he was driving a kinetic Honda scooter bearing No.AP 9 AA 9798. The case of the petitioner is that while he was going towards Sanjeevareddy Nagar from Sdhartanagar and when he reached Sanjeevareddy Nagar circle, one TATA Serro car bearing No.AP 9 R 7879 driven by its driver in a rash and negligent manner came from the right side of his vehicle and dashed against the vehicle, as a result of which the petitioner fell down leading to multiple fractures and injuries on his body. Immediately thereafter, the petitioner was shifted to NIMS, wherein he was admitted as an in-patient for treatment. It is the case of the petitioner that he was operated twice and discharged after two

months. The claim of the petitioner is that he was working as a Software Engineer i.e., as a System Manager with Wipro Technologies Limited, Hitech City, Madhapur, Hyderabad and was drawing salary of Rs.35,000/- per month as on the date of incident. The respondents filed counter denying the averments made in the original petition. The first respondent contended that there was no negligence on the part of the driver of the subject vehicle and further contended that the driver had a valid driving licence and the vehicle was validly insured with respondent No.2 the Insurance Company. Respondent No.2 on the other hand, though contended that there was no negligence on the part of the driver of the vehicle, stated that there was no driving license for the driver and that there was no insurance for the vehicle in question and as such the insurance company is not liable to pay any compensation.

Basing on the material available on record, the Court below framed the following issues:

1. Whether the petitioner sustained injuries in the motor accident that took place on 23.12.2000 at about 10.30 p.m. at Sanjeevareddy Nagar Cross Road, Hyderabad, due to rash and negligent driving of the driver of the TATA Sierra bearing No.AP9 R 7879.
2. Whether the petitioner is entitled to compensation, if so to what amount and from whom?
3. To what relief?

In support of the claim, the claimants examined PWs.1 and 2 and got marked Exs.A1 to A18. Ex.B1 the Insurance Policy is the exhibit marked for the respondent.

After analyzing the evidence on record, the trial Court awarded Rs.4,40,000/- . Challenging the same, the present appeal came to be filed.

The only ground urged by the learned counsel for the claimant is that having found that the petitioner has suffered 20% permanent disability, the trial Court ought to have calculated the compensation to be awarded by considering a suitable multiplier, instead of awarding a lumpsum amount of Rs.3,00,000/- towards loss of earnings.

The same is opposed by the learned counsel for the Insurance Company stating that even if the Court intends to consider suitable multiplier for the loss of earnings due to disability, the same has to be taken as 10% but not 20% having regard to the nature of injuries and the disability.

It is to be noted that this is an appeal filed by the claimant seeking enhancement of compensation awarded by the Court below wherein the disability was assessed by the trial Court at 20%

The relevant portion of the judgment of the trial Court with regard to the disability factor is in para No.9, which reads as under:

“9. Then coming to the amount of compensation, according to the petitioner/ PW1 he sustained compound segmental fracture of both bones of right leg, besides receiving multiple injuries all over the body. He was immediately shifted to NIMS and surgeries were conducted on 24.12.2000 and 17.01.2001. He was discharged on 05.02.2001 with an application of plaster of paris to his right leg. After the discharge, he attended the said hospital for follow up treatment till January, 2002. The petitioner was totally bed ridden during the entire period with plaster of paris to his rights leg. The

plaster of paris was finally removed on 05.01.2002. Because of the fracture injuries he sustained disability and is not able to walk properly, climb steps and run like a normal man and not able to drive the vehicle and also not able to sit for long time. Even on slightest touch to the right leg, he is incurring severe pain. He is still using pain killers. He used to come down to Hyderabad from Cuddapah once in a month by engaging a car. He used to pay Rs.5,000/- for each trip of the car. In support of his evidence of injuries, he got examined PW3 who is the doctor who issued the medical disability certificate PW3 stated that there is shortening of right lower limb by one centimeter. PW1 is still taking treatment from him. Scar marks are present over the right leg of PW1 and wasting of right thigh muscles and limited flexion of right knee terminally. X-ray shows segmental fracture of both bones of right leg healed. The disability of PW1 is about 20% and it is partial and permanent. The petitioner did not examine the doctors who treated him, but he filed the medical records pertaining to his treatment. Ex.A4 is the discharge record which discloses that the petitioner sustained grade II A compound segmental fractures to both bones of right leg. Ilizrow fixation was done once for the right leg. Ex.A5, the out-patient card pertaining to NIMS hospital, Hyderabad, also show that ilizrow fixation was done to the right leg. He was advised to visit the hospital for ilizrow removal. Ex.A5 is dated 17.01.2001. The other out-patient cards also show that the petitioner/ PW1 has been visiting the hospital for ilizrow removal etc. They reveal that the petitioner/ PW1 has been visiting the hospital till 05.01.2002".

From the findings arrived at, it is clear that the petitioner has undergone fractures to both the bones separately and ilizrow fixation was done once for the right leg. Apart from that, the disability to PW1 was partial and permanent. As per the discharge record, the petitioner sustained Grade III A compound Segmental fractures to both bones of right leg.

The compensation awarded by the Court below, under different heads, are as follows:

1. Pain and sufferings	–Rs. 35,000/- ,
2. Medical Expenditures	- Rs. 89,346/-
3. Loss of earnings during the period of treatment rest and recovery	- Rs.3,00,000/-
4. Loss of future amenities of life	- Rs. 15,000/-

Total	- Rs.4,39,346/-

The main argument of the learned counsel for the appellant appears to be with regard to fixation of loss of earnings, which was arrived at Rs.3 lakhs, by taking the income at Rs.30,000/-, without applying the multiplier. The contention of the petitioner appears to be correct. The trial Court ought to have answered the loss with precision by applying multiplier method instead of awarding lumpsum amount, which was without any basis.

As seen from the record, the claimant was aged about 27 years at the time of accident. Applying the ratio laid down in *Sarla Verma Vs. Delhi Transport Corporation*¹, the suitable multiplier to be adopted for calculating the loss of earnings would be '17'. Even if the income of the claimant is taken as Rs.30,000/- per month, as held by the trial Court, the annual income would be of Rs.3,60,000/-.

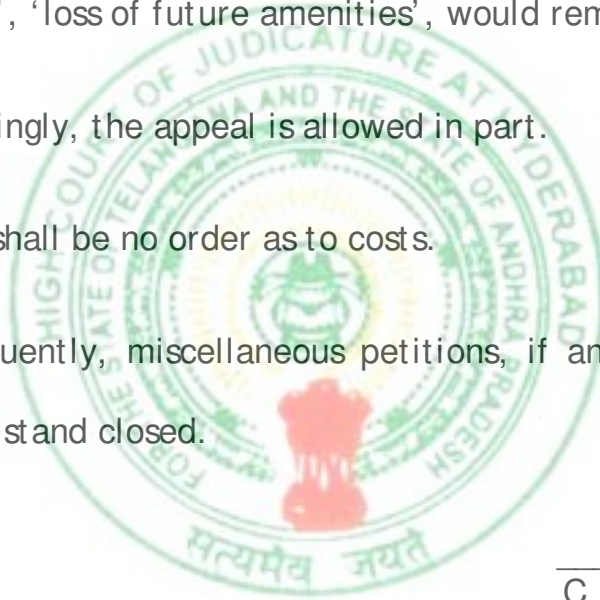
¹ 2009 (6) SCC 121

Since the disability was assessed as 20% which is partial and permanent and having regard to the nature of injuries sustained, loss of earnings during the period of treatment, rest and recovery would be Rs.12,24,000/- (Rs.3,60,000 X 20% X 17). Since Rs.3,00,000/- has already been paid towards loss of earnings, the same has to be deducted. Accordingly, the total amount of compensation towards loss of earnings which the petitioner is entitled now would be Rs.9,24,000/- (Rs.12,24,000 – Rs.3,00,000/-). The compensation awarded by the Court below under the heads 'pain and sufferings', 'medical expenditures', 'loss of future amenities', would remain unaltered.

Accordingly, the appeal is allowed in part.

There shall be no order as to costs.

Consequently, miscellaneous petitions, if any, pending in these appeals shall stand closed.



C. PRAVEEN KUMAR, J

N. BALAYOGI, J

07.12.2017

vhb