HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SRI JUSTICE N.BALAYOGI

M.A.C.M.A No.1203 of 2007

JUDGMENT : (per Hon'ble Sri Justice C.Praveen Kumar)

1) Aggrieved by the quantum of compensation awarded in O.P.No.2104 of 2001 on the file of the XVII Additional Chief Judge-cum-III Additional Metropolitan Sessions Judge at Hyderabad, the present appeal came to be filed.

2) The appellant herein filed the above O.P., claiming compensation of Rs.30 lakhs for the injuries sustained by him in the motor vehicle accident that occurred on 25.01.2001 at about 6.15 p.m., on N.H.4 near Kurbahalli village under the limits of the Mulbagal P.S., Karnataka state.

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

4) The facts of the case are as under:-

The petitioner/injured was aged about 52 years as on the date of incident. He claims to be a leading businessman in Chittoor, Bangalore and Hyderabad and was Managing Partner of Naidugopika Dairy Milk at Bangarupalyam, Chittoor District besides having agricultural lands and transport business. It is stated that the monthly income would be around Rs.1,00,000/- and number of people are depending on his business. On 25.01.2001, the claimant along with his brother were traveling in a Fiat Car bearing No.KA-03-MA-1269 belonging to 5th respondent driven by 4th respondent and insured with 6th respondent, from Bangalore to Chittoor on NH4. When they reached Kurbahalli village, an Indica Car bearing No.TN-01-S-3459 driven by the first respondent, belonging to second respondent and insured with the third respondent, dashed against the Car, in which the claimant was traveling. As a result of which, he sustained grievous injuries. Immediately, thereafter both of them were admitted in Manipal Hospital and were treated as inpatient apart from getting operated. The claimant was admitted in Hospital on 26.01.2001 and was discharged from the hospital on 11.03.2001. According to him, huge amounts were spent towards the treatment apart from suffering lot of pain and agony. Hence, the claim petition came to be filed making all the respondents jointly and severally liable.

5) By its judgment dated 09.01.2007, the Tribunal awarded compensation of Rs.2,38,169/- as against the claim of Rs.30 lakhs. The same is challenged on the ground of inadequacy.

6) Learned counsel for the appellant mainly submits that the quantum of compensation awarded is quite meager and as such seeks

enhancement of the same. He placed on record, the balance sheets and audit reports, to show the loss caused to the Dairy farm due to the absence of the petitioner in the day to day functioning of the dairy farm. The learned counsel would submit that the petitioner has suffered nearly 30% of the disability and as such his supervision over the dairy farm being nominal, the same got badly affected over a period of time.

7) On the other hand, the learned counsel for the insurance company would contend that in the absence of any material showing quantum of loss caused and since the injury is only to the left hip and as the same does not lead to functional disability, the finding of the trial court warrants no interference.

8) The point that arises for consideration is "Whether the claimant is entitled for any enhancement in the quantum of compensation awarded by the Tribunal?"

9) Since there is no appeal filed by the insurance company, we need not go into the manner in which the accident occurred; as to whether there was any negligence on the part of the driver of the vehicle and also as to whether the insurance company is liable to pay the compensation. Though the learned counsel for the appellant raised various grounds he confined his plea with regard to loss in income from M/s.Naidugopika Dairy Milk at Bangarupalyam of which the

petitioner is a partner. As per the extract of the statement of the income, the claimant is entitled for 30% share of the property of the said dairy.

10) As seen from the record, the petitioner herein sustained fracture to the left hip. The percentage of disability insofar as fracture of left hip, is shown as 10%. P.W.1 in his evidence deposed that he was the person to deal with the executive functions of the dairy, was in hospital as inpatient for nearly one month and as outpatient for about another 1 ½ month. He admits that he has not filed any document specifically showing the loss incurred during the 4 ½ months period i.e., while he was taking treatment and rest after his discharge from the hospital. But he has filed income tax returns for the assessment years 2000-2001, 2001-2002, 2002-2003 and 2003-2004. According to him, after the accident they could not run the dairy properly and as such they were forced to sell the same in the year 2003 i.e., about 2 ½ years after the accident.

11) As stated earlier, the only ground raised by the learned counsel for the petitioner is with regard to loss of income from the dairy farm, because of the petitioner being bed-ridden for nearly 4 ½ months i.e., for 1 ½ month as in-patient; 1 ½ month as out-patient and another 1 ½ month while taking bed-rest, at his village. In the cross-examination P.W.1 admits that after the accident, the dairy farm was

getting profit till August 2003 but the profit was far less when compared to the profit which it earned, prior to this incident. Therefore, the evidence of P.W.1, who is the prime witness in the case, establish that the dairy farm was earning profits even after the accident but due to lack of proper supervision for the period of 4 ½ months due to disability of the appellant, the margin of profits has come down.

12) As seen from the chart which has been placed on record, the gross profit for the year 1999-2000 was about Rs.51,36,053/- (Ex.A-17), for the year 2000-01 the gross profit was Rs.50,12,114/- (Ex.A-8) gross profit for the year 2001-02 (Ex.A-9) was Rs.42,23,674/- and for 2002-03 (Ex.A-18) the profit was Rs.46,34,145/-. If the four years period was taken into account the profit got reduced even in the year 2000-01 when the appellant was normal and was supervising the operations of the dairy. However, there was a fall of Rs.8 lakhs for the financial year 2001-02, which picked up during the financial year 2002-03. From the above, it is clear that there was some loss for the financial year 2001-02 when compared to the previous year. But, however, during the year 2002-03 the dairy farm earned more profit than the financial year 2001-02. The argument of the learned counsel for the appellant is that if the results of financial year 2000-01 are compared with the financial year 2001-02, there was a reduction in profit margin by about 8 lakhs.

This amount is sought to be claimed by the petitioner in this appeal. According to him, the Tribunal erred in awarding only a sum of Rs.50,000/- towards loss of past earnings. As seen from the record, the claim of the claimant over the profit, as per the extract from statement of income issued by the Chartered Accountant was 30%. If 30% is taken as the share of the claimant from the earnings of the Dairy farm, the loss caused would be 30% on Rs.8 lakhs. As seen from the chart, though the petitioner was normal during the assessment year 2000-01, there was a loss to the said dairy farm to the extent of about Rs.1,20,000/-. Therefore, it cannot be said that due to the injuries sustained, he was not able to attend to the work regularly and there was a loss during the assessment year 2001-02. Various circumstances and factors come into play in the dairy farm business and one cannot say that because of his physical disability the dairy farm sustained huge loss. Since the petitioner was looking after the day-to-day activities of the dairy farm, definitely there could have been some loss, if not, the amount as claimed by the claimant. Even the material, placed on record would show the reduction in profit through the Naidugopika Dairy Milk at Bangarupalyam was about Rs.8 lakhs when compared with the financial year 2000-01. Therefore, we feel that a reasonable amount can be fixed towards the loss of earnings, having regard to the fact that the appellant was getting 30%

share in the profits earned by the Naidugopika Dairy Milk at Bangarupalyam.

	1999-2000	2000-2001 Ex.A8	2001-2002 Ex.A9	2002-2003 Ex.A18
Net Profit	24,520/-	6,289/-	24,773/-	30,491/-
Depreciation	23,06,197/-	22,06,511/-	16,37,072/-	18,49,426/-
Cash Profit (Net Profit + Depreciation	23,30,717/-	22,12,800/-	16,61,845/-	18,79,917/-
Gross Profit (Trading Account)	51,36,053/-	50,12,114/-	42,23,674/-	46,34,145/-

13) If the cash profit i.e., net profit after depreciation is taken into consideration, the loss in profit between the assessment years 2000-01 and 2001-02 would be around Rs.5,50,955/-. Admittedly, the petitioner is having 30% partnership in the said diary. Therefore, the loss caused to the petitioner would be 30% of Rs.5,50,955/- which would be around Rs.1,65,286/-.

14) It is to be noted that the accident took place on 25.01.2001 at Kurnahalli. Immediately after the accident the claimant was shifted to Manipal Hospital, Bangalore, where he took treatment as in-patient for a period of 47 days. Though the claimant is resident of Hyderabad, no amount was awarded by the Tribunal towards transportation charges for shifting the injured from the place of accident to Bangalore and also from Bangalore to Hyderabad, after treatment. As there is no dispute with regard to place of residence and place of treatment, I deem it appropriate to award an amount of Rs.20,000/- towards transportation charges.

15) The evidence of PWs.1 and 2 categorically establish that the claimant was an in-patient in Manipal Hospital, Bangalore, for nearly 47 days. He being a resident of Hyderabad, which is far from Bangalore, the claimant must have taken the help of an attendant to attend on him during the said period and also for some period thereafter, as the medical evidence would show that he sustained dislocation of left hip. In view of the above, the amount awarded by the Tribunal towards incidental charges appears to be meager. Therefore, further amount of Rs.15,000/- can be awarded towards attendant charges.

16) Accordingly, the appeal is allowed by enhancing the compensation from Rs.2,38,159.00 to Rs.4,38,159.00. The enhanced amount will carry an interest of 6% p.a. from the date of petition till the date of realization. There shall be no order as to costs. Miscellaneous Petitions pending in this appeal, if any shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE N.BALAYOGI

Dt:29.12.2017
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