

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A. No. 2381 of 2012

JUDGMENT:

This appeal is arising out of the order and decree dated 11.01.2012 passed in O.P.No.772 of 2009 by the Motor Accidents' Claims Tribunal, Anantapur. The Original Petition was filed under Section 140 and 166 of the Motor Vehicles Act for compensation of Rs.15,00,000/- for the injuries, suffered by the petitioner in a motor vehicle accident occurred on 28.04.2007.

2. Brief facts of the case are that on 28.04.2007 at 11:30 PM, while the petitioner was going in a Tata Sumo bearing No. AP-02U-6734 to Bangalore, near Sankar Farm on NH-7, one lorry bearing No. KA-50-1027 came in opposite direction at a high speed and dashed against the vehicle, and the petitioner had received injuries and was shifted to NVR Hospital, Bangalore. As his condition was serious, he was referred to M.S.Ramaiah Memorial Hospital, Bangalore, wherein he was treated for Spinal Cord injury, and dislocation of discs. He was discharged on 04.05.2007. Again he was admitted in Kalyandurg Gowri Clinic on 05.05.2007 and discharged on 29.05.2007. He had taken treatment as inpatient in Pavani Super Specialty Hospital from 29.05.2007 to 31.05.2007. The petitioner was a retired Government Employee, aged about 68 years by the date of accident, and was earning Rs.10,000/- per month in addition to his pension. The petitioner sustained fracture injuries to his right upper and lower limb on right shoulder and on neck and grievous injuries on head and on left leg palm. He incurred huge expenditure for medical treatment and transport.

He alleged that the accident occurred due to the rash and negligent driving by the driver of the lorry bearing No.KA-50-1027. He claimed compensation of Rs.15,00,000/- against respondents 1 and 2, the owner and the insurer, of the crime lorry.

3. The 1st respondent is the owner of the crime lorry who remained *ex parte*. The 2nd respondent filed counter denying the allegations in the claim petition and contended that the driver of the Tata Sumo vehicle in which the petitioner was travelling contributed to the accident.

4. The Tribunal awarded compensation of Rs.1,90,000/- against respondents 1 and 2. Being aggrieved by the quantum of compensation and seeking enhancement, the petitioner-claimant filed this appeal.

5. The point for consideration in this appeal is whether the appellant is entitled for enhancement of compensation?

6. Heard Sri Manohar Reddy, counsel for the appellant. None appeared for the respondents inspite of service of notice.

7. The appellant was injured in a motor vehicle accident. The accident occurred due to rash and negligent driving of the crime vehicle. The owner and insurer are held liable to pay compensation. The appellant was aged 68 years, a retired pensioner. He received injury to his spinal cord. In his old age, he can't do any work due to the injury suffered by him to his spinal cord. Though he stated that he is earning Rs.10,000/- per month in addition to his pension, there is no proof adduced by the appellant. Tehrefore, his notional income can be taken at Rs.3,000/- per month.

8. PW3-Dr. Ravi Gopal Verma, at the first instance deposed that the petitioner suffered spinal cord injury and weakness of upper and lower limb of left side. PW4-Dr. Sajid Ali of NVR Hospital deposed that the petitioner suffered multiple injuries and got Cervical fractures to right humerus radius, ulna.

9. The Tribunal, on consideration of Discharge summary-Ex.A7, came to the conclusion that the petitioner sustained two injuries, one spinal cord injury and awarded Rs.30,000/- for two injuries and Rs.10,000/- for spinal cord injury.

10. The evidence of PW6-Dr. A. Jagannath shows that the petitioner suffered 70% disability which is permanent in nature, but the Tribunal has awarded compensation of Rs.1,00,000/- for the disability. Ex.A4 is the disability certificate issued by the Medical Board, Anantapur.

11. On consideration of the evidence of the medical officers PWs.3, 4, 5 and Ex.A5-Disability Certificate, it is obvious that the petitioner suffered two grievous injuries, and one injury to the spinal cord. Though there is no fracture injury to spinal cord, it may cause inconvenience throughout his life. No doubt, the appellant has filed a disability certificate issued by the Medical Board. But as per the evidence of PW6-Dr.A.Jagannath, the petitioner suffered 70% permanent disability. PW6 was working as Civil Assistant Surgeon, and Professor in Government Hospital, Anantapur, and he was one of the members of the Medical Board. He examined the appellant on 11.04.2007 and on examination he and other members of the Medical Board issued the certificate assessing the disability of the

petitioner, which shows that the petitioner suffered 70% permanent disability.

12. The deposition of PW6-Dr.A. Jagannath in his Chief Examination reads as under:

“..... It is due to post traumatic sequelae due to R.T.C. on 29.04.2007 with head injury, cervical spine injury with cervical cord contusion and central cord syndrome, fracture right ulna and fracture right humerus with weakness of all limbs. He has taken treatment at M.S. Ramaiah Hospital, Bangalore and at Kalyandurg. Fractures united with malunion with restricted range of movements of right shoulder, right fore arm and elbow. Weakness of both upper limbs especially both hands motor power grade 2 to 3. With partial loss of functions of both hands. He has got weakness of both lower limb muscles. He needs support for walking always. He cannot sit or stand independently. He has got difficulty in long distance walking, prolong standing due to weakness of muscles of both lower limbs. The petitioner requires one attendant. Sometimes he requires wheel chair for movement.”

13. Nothing adverse was elicited from the cross examination of PW6. In fact, PW6 was one of the members of the Medical Board, and his testimony can be taken into consideration for award of compensation.

14. The Tribunal, without considering the 70% disability, awarded a lumpsum amount of Rs.1,00,000/-. No doubt, the petitioner was aged about 68 years and a pensioner by the date of accident. However, he has to suffer for the rest of his life with 70% disability. The Tribunal ought to have considered the 70% disability and calculated the future loss of earnings

basing on the law laid down in **Sarla Verma and Ors. V. Delhi Transport Corporation and Anr¹**.

15. Keeping in view the notional income of Rs.3,000/- per month, his annual income comes to Rs.36,000/-. As per **Sarla Verma (1 supra)**, ‘5’ is the multiplier applicable to the age of appellant. Therefore, the loss of earnings comes to Rs.36,000 x 5 = Rs.1,80,000/-. Out of the amount of Rs.1,80,000/-, due to 70% permanent disability, his loss of future earnings will be to the tune of Rs.1,26,000/-. Therefore, the appellant is entitled to Rs.1,26,000/- towards loss of future earnings.

16. The appellant claimed Rs.1,30,000/- towards medical expenditure and transport, and the Tribunal awarded Rs.50,000/-. Therefore, keeping in view the medical evidence, the same is enhanced to Rs.75,000/-.

17. The Tribunal has not awarded compensation towards attendant charges and extra nourishment. Keeping in view the nature of injuries suffered by the appellant, an amount of Rs.10,000/- is awarded on these counts. An amount of Rs.6,000/- is also awarded towards loss of earnings for two months at the rate of Rs.3,000/- per month.

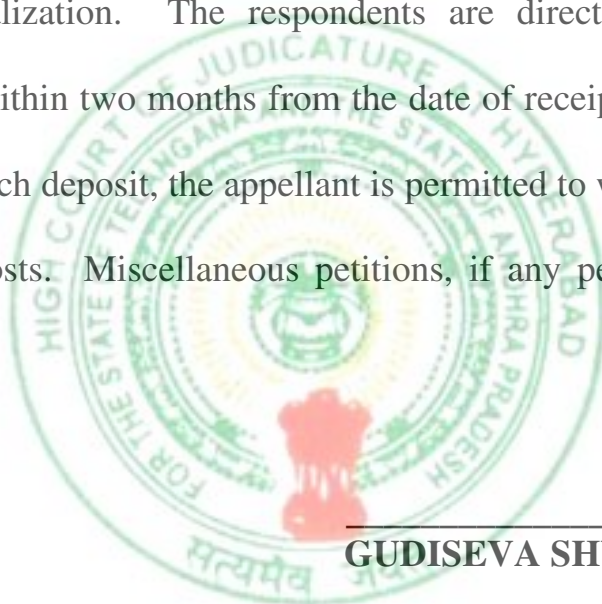
18. The compensation, under various Heads, is enhanced as shown in the tabular format below:

S.No	Head	Compensation awarded by Tribunal	Compensation enhanced
1.	Two injuries @ Rs.15,000/- each	Rs.30,000/-	Rs.30,000/-
2.	One spinal cord injury	Rs.10,000/-	Rs.10,000/-
3.	Medical bills and transportation	Rs.50,000/-	Rs.75,000/-

¹ (2009) 6 SCC 121

4.	Medical attendant charges and extra nourishment	NIL	Rs.10,000/-
5.	Loss of earnings during treatment	NIL	Rs.6,000/- (@ Rs.3,000 per month for two months)
6.	Loss of future earnings for 70% permanent disability	Rs.1,00,000/-	Rs.1,26,000/-
	Total	Rs.1,90,000/-	Rs.2,57,000/-

19. Accordingly, the appeal is partly allowed, by enhancing the compensation awarded by the Tribunal from Rs.1,90,000/- to Rs.2,57,000/- with proportionate costs and interest at 7.5% per annum from the date of petition till realization. The respondents are directed to deposit the compensation within two months from the date of receipt of a copy of this order and, on such deposit, the appellant is permitted to withdraw the entire amount. No costs. Miscellaneous petitions, if any pending, shall stand closed.



GUDISEVA SHYAM PRASAD, J

17th February, 2017
ksm

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



MACMA No. 2381 of 2012

17th February, 2017

ksm