

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.712 OF 2014

JUDGMENT:

This appeal is filed by the appellant-claimant aggrieved by the Order and Decree dated 22.07.2011 passed in M.V.O.P.No.964 of 2008 by the Motor Accident Claims Tribunal (Principal District Judge), West Godavari at Eluru (for short, the Tribunal).

2. The brief facts of the case are that on 13.09.2008 at about 7.00 pm., while the appellant was proceeding on walk near Ramalyam Temple on Koyyalagudem-Nallajerla Road, school bus bearing No.AP37W 1613, being driven by the first respondent in a rash and negligent manner, hit him. In the said accident, the appellant sustained a crush injury and other grievous injuries and his right leg above knee was amputated. He filed the claim petition claiming compensation of Rs.18,00,000/- against respondents 1 to 3, the driver, owner and insurer of the aforesaid bus.

3. The respondents filed their written statements denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

4. After considering the evidence produced by the parties, the Tribunal granted a total sum of Rs.8,00,000/- i.e., Rs.12,500/- for one crush injury, Rs.1,00,000/- for permanent disability, Rs.3,30,000/- towards loss of dependency, Rs.3,00,000/- towards medical expenses, extra nourishment, transportation and other expenses and Rs.57,500/- towards pain and suffering with 7.5% interest.

5. Learned counsel for the appellant submitted that though the appellant claimed a sum of Rs.28,000/- per month towards his income and filed Ex.A.12-certificate given by Dodla Dairy Limited to the effect that he has been earning an amount of Rs.10,000/- per month as commission by supplying milk, the Tribunal wrongly taken an amount of Rs.5,000/- per month as the income of the appellant. He further submitted that in spite of producing Ex.A.19-permanent disability certificate issued by the Medical Board, Eluru, assessing the permanent disability at 70%, the Tribunal wrongly taken the disability at 50%. He further submitted that the Tribunal has granted meager amount of Rs.12,500/- for crush injury. He sought to enhance the compensation under those heads.

6. Learned counsel for the third respondent-insurance company submitted that the amount awarded by the Tribunal is excessive and sought to dismiss the appeal.

7. The appellant though claimed that he was earning Rs.18,000/- per month by doing leasehold cultivation, he did not file any proof to that effect. With regard to his claim that he was earning Rs.10,000/- per month by doing milk supply, he filed Ex.A.12-certificate, given by Dodla Dairy Limited, but the Tribunal did not take into consideration the same and taken the income of the appellant at Rs.5,000/- per month. In the facts and circumstances of the case, this Court feels that it would be appropriate to take the income of the appellant at Rs.10,000/- per month by taking into consideration Ex.A.12.

8. With regard to permanent disability, in spite of there being Ex.A.19-permanent disability certificate issued by the Medical Board, Eluru, assessing the permanent disability at 70%, the Tribunal assessed the disability of the appellant at 50%. In the accident, as the right leg of the appellant above the knee was amputated, this Court is inclined to take the disability of the appellant at 70%. The multiplier for the age of the deceased is '11' as per the ratio laid down by the Hon'ble Supreme Court in **Smt.Sarla Varma v Delhi Transport Corporation**¹. Hence, the compensation towards loss of dependency comes to Rs.9,24,000/- (Rs.1,20,000/- X 11 X 70/100). With regard to awarding of compensation of Rs.12,500/- towards crush injury by the Tribunal, this Court is inclined to enhance the same to Rs.25,000/-. Except the said enhancement, rest of the award remains un-changed.

9. In the result, the Motor Accident Civil Miscellaneous Appeal is partly allowed to the extent indicated above. The respondents are directed to deposit the compensation amount along with proportionate costs and interest within two months from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the entire amount. Miscellaneous petitions pending, if any, shall stand closed.

T.AMARNATH GOUD, J

Date: 27.11.2018
TJMR

¹ 2009(6) SCC 121