The Hon'ble Sri Justice Gudiseva Shyam Prasad

MACMA.No.1159 of 2009

Date: 22.06.2018

Judgment:

This Appeal arises out of Order, dated 13-04-2005, in MVOP.No.1393 of 2001 on the file of the Motor Accident Claims Tribunal –cum- District Judge, Nizamabad (for short 'the Tribunal').

The appellant filed the aforesaid MVOP under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.10 lakhs for the injuries sustained by him in a motor accident that occurred on 11-10-1998. The Tribunal, on consideration of both oral and documentary evidence, partly allowed the said MVOP by awarding a compensation of Rs.4,06,484/- with interest @ 9% p.a., from the date of petition till the date of realization. Dissatisfied with the quantum of compensation and seeking enhancement of the same, the appellant has preferred this Appeal.

Heard the learned Counsel for the appellant. None appeared for respondent No.2- Insurance Company.

The learned Counsel for the appellant submitted that though the oral evidence of PW.2 coupled with Ex.C.1- medical certificate clearly showed that the percentage of disability suffered by the appellant is 70%, the Tribunal erred in taking the same at 50%.

In this regard, the evidence of PW.2- Dr.N.Srinivas Rao, who treated the appellant, is relevant. He stated that on 15.06.1999, the appellant was admitted in his hospital with malunited fracture of both femora and both sides infection with discharging sinus; that on the same day, he performed surgery, removed the infected rod from right thigh and discharged the appellant on 24-06-1999; that again on 30.10.1999, the appellant was admitted in his hospital with severe infection of left thigh and gluteal region, for which he conducted another surgery, removed the infected rod from left thigh and discharged the appellant on 05.11.1999; that the appellant has continued follow up treatment as per the medical advice; and that again on 04.11.2001, the appellant was admitted in his nursing home with pryogenic abscess right, for which incision and drainage was done by conducting surgery. He further stated that the appellant underwent two operations for both thighs and steel rods were inserted as per the medical record maintained at Gandhi Hospital, Secunderabad, and the Government Hospital, Kamareddy; that one month after his discharge from the hospital, he was again admitted in NIMS hospital and underwent two operations; that as per the medical record produced by the appellant, he took treatment in Bhudan Ramchandra Reddy Hospital and Dr.Probodh Ramchandra Reddy Hospital, Musheerabad, Hyderabad; that he underwent two operations to both thighs; that subsequently, on 01-04-2004, the appellant came to him; and that he examined the appellant clinically and physically, verified his medical records and assessed the disability suffered by him at 70% on account of the bilateral malunited fracture of both femora. PW.2 further stated that the appellant was limping on account of fractures to both thighs; that the limping will be life long; that there is shortening of 1" left leg and ½" right leg; that the shortening will be permanent; that he will be able to walk with crutches; that he cannot do hard work; that he cannot walk for long distance; and that he cannot squat on account of stiffness or tight knee joint.

The appellant is stated to be an agriculturist. The evidence of PW.3 coupled with Ex.C.1- medical certificate makes it clear that the appellant cannot attend to any of the agricultural operations in future because of the permanent disability suffered by him. In Para 20 of the Judgment under Appeal, the Tribunal has observed that as per the medical evidence, the petitioner cannot attend to any work through out his life and requires support even to move from one place to another and that he has become permanently disabled, due to which he lost his earnings. Even after observing as such, the Tribunal has wrongly adopted the percentage of disability suffered by the appellant at 50%. Hence, the percentage of permanent disability suffered by the appellant can be taken as 70% for reckoning his loss of earning capacity.

It is further submitted by the learned Counsel for the appellant that the Tribunal has wrongly deducted 1/3rd towards the personal expenditure of the appellant, which is not contemplated by any provision of law.

In ordinary course, we deduct 1/3rd towards personal expenditure in case of the deceased while caliculating the loss of earnings. In the case on hand, there is no need to deduct any amount towards the personal expenditure of the appellant as he has suffered permanent disability due to the accident and he is alive.

The learned Counsel for the appellant relied upon a judgment of the Apex Court in **National Insurance Company Limited vs. Pranay Sethi and others**[1] and submitted that

[1] **MANU/SC/1366/2017**

while determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects should be made, if the deceased had a permanent job and was below the age of 40 years.

As the appellant has not filed any documentary evidence to prove his notional income, the Tribunal has taken Rs.3,000/- as his monthly income. As the appellant was aged about 23 years as on the date of the accident, in view of the settled legal position referred to above, he is entitled to an addition of 50% of the actual income towards future prospects. In such a case, his monthly income would be Rs.4,500/- (Rs.3000/- + Rs.1500/-). The relevant multiplier is 18. When 70% is applied, the appellant would be entitled to a sum of Rs.6,80,400/- (Rs.4,500/- x 12 = Rs.54,000/-; Rs.54,000/- x 70% = Rs.37,800/-; Rs.37,800/- x 18 = Rs.6,80,400/-) towards loss of earnings.

Accordingly, the compensation awarded by the Tribunal as enhanced by this Court is shown in the following tabular form:

S.No.	Head	Amount awarded by the Tribunal	Amount granted by this Court
1.	Disability	Rs.1,00,000/-	}
2.	Loss of earnings	Rs.2.21.040/-	}Rs.6,80,400/-
3.	Pain & Suffering	Rs. 50,000/-	Rs. 50,000/-
4.	Medical Bills, Transport & Extra Nourishment charges	Rs. 35,444/-	Rs. 35,444/-
Total		**Rs.4,06,484/-**	**Rs.7,65,844/-**

In the result, the Appeal is partly allowed by enhancing the compensation of Rs.4,06,484/-, as monetary awarded by the Tribunal, to Rs.7,65,844/- with proportionate costs and interest @ 7.5% from the date of the petition till the date of realization. Respondent No.2- insurer is directed to deposit the entire compensation before the Tribunal within two months from the date of receipt of a copy of this order. The amount, if any already deposited by respondent No.2- insurer, shall be given credit to. On such deposit, the appellant is permitted to withdraw the same without furnishing any security.

(Gudiseva Shyam Prasad, J)

Dt: 22nd June, 2017
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