

THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Miscellaneous Appeal No. 3312 of 2004

Judgment:

This appeal was preferred by the claimant in O.P.No.736 of 1993 on the file of the Motor Accidents Claims Tribunal-cum-I Additional District Judge, Medak at Sangareddy.

The injured claimant filed the claim petition claiming an amount of Rs.1,50,000/- and initially the claim was allowed for an amount of Rs.72,500/- by order of the Tribunal dated 29.10.1998. When the injured preferred an appeal on earlier occasion in CMA No.1395 of 1999, this Court by judgment dated 23.06.2003 remanded the matter since the Doctor was not examined in support of the medical evidence. After remand, when the Tribunal passed an award for the same amount of Rs.72,500/- along with interest at 9% p.a., the present appeal is filed.

It is the case of the appellant/claimant that on 09.09.1993 he along with his family members went on pilgrimage and on 18.09.1993 while returning by travelling in Bajaj Tempo bearing registration No.MH-22A-9837 and after visiting Jharasangam temple, when the Tempo reached near Kupparam village limits, it turned turtle resulting in grievous injuries to his left leg and left hand. He was shifted to Government Hospital, Zaheerabad along with other injured and thereafter he was shifted to Gandhi Hospital, where he was treated as inpatient and his left leg was amputated up to knee level. He was also treated for the fracture to his left hand and he has undergone major operation. The Zaheerabad police registered a case against the driver of the Tempo and, accordingly, he filed the claim petition claiming an amount of Rs.1,50,000/-. He also

stated that he was working as Salesman on a monthly salary of Rs.1,500/- excluding the allowances and he is the only earning member of the family.

The respondents 1 and 2 filed separate counters disputing the rash and negligent driving of the driver of the Tempo and denying their liability.

On the basis of the above pleadings, the following issues were framed by the Tribunal.

1. Whether the pleaded accident occurred on 18.09.1993 due to the rash and negligent driving of Tempo No.MH.22A 9837?
2. Whether the said vehicle is insured with R2 at the time of accident?
3. Whether the claimant is entitled for compensation, at what quantum?
4. To what relief?

The claimant was examined as PW.1 and examined one D. Gopal as PW.2 and Dr. M.S. Goud as PW.3 on commission. On behalf of the respondents RW.1 was examined. The claimant filed Exs.A1 to A10, whereas Exs.B1 and B2 were marked on behalf of the respondents.

The Tribunal on evidence held that the accident occurred due to rash and negligent driving of the driver of the Tempo. The Tribunal also gave a finding that the vehicle was insured with the second respondent at the time of accident. Since the claimant examined the concerned doctor after remand, the injuries sustained by the claimant are noticed as follows.

1. Crush injury left leg with distal neuro vascular deficit.
2. Crush injury left hand with second, third and fourth metacarpal bone fractured.

The left leg was amputated up to knee level and was discharged on 30.09.1993. He attended the hospital as outpatient for a period of three

months and the said injuries were grievous in nature. The doctor who was examined on commission opined that the petitioner sustained 55% functional disability which is permanent in nature. The evidence of PW.3 was corroborated by Exs.A6 to A8. Since the Tribunal earlier awarded an amount of Rs.72,500/-, the same amount was awarded without any discussion even after remand also.

Learned counsel appearing for the appellant/claimant submitted that the approach of the Tribunal is totally wrong and when there was 55% disability, the Tribunal should have taken the monthly income of the claimant and applied the appropriate multiplier in arriving at the loss of income. He further submitted that in view of the decision of the Division Bench of this Court reported in Sanjay Batham v. Munnalal Parihar¹, there is no bar for this Court to enhance the compensation beyond what was claimed in the claim petition.

There is no dispute that the claimant filed Ex.A9 salary certificate showing his monthly income at Rs.1,500/-, but the said salary certificate was not taken into consideration by the Tribunal. No one connected with the said certificate was examined. In those circumstances, since there would be some exaggeration in the claim, it can be taken as Rs.1,200/- per month. The appropriate multiplier is '17', since the age of the claimant was 30 years. By applying the said multiplier and 55% of the disability is also taken into consideration, the loss of earnings would come to Rs.1,34,640/- (Rs.1200/- x 12 x 17 x 55%).

The Tribunal awarded Rs.1,000/- towards transport to hospital, Rs.3,000/- for extra nourishment and Rs.4,508/- towards medicines. The

¹ 2012(2) ALD 153 (SC)

Tribunal also awarded Rs.10,000/- for pain and suffering. An amount of Rs.4,000/- was awarded for loss of earnings from the date of accident.

The evidence on record shows that the claimant was hospitalized for a period of 12 days and on that count he must have lost his earnings. Hence, an amount of Rs.1,000/- can be awarded for loss of earnings for the said period. Thereafter, he was visiting the hospital for three months as outpatient and he must have incurred at least Rs.3,000/- towards transportation charges. During the period of hospitalization he needs extra nourishment and for which purpose the Tribunal already awarded Rs.3,000/- and Rs.4,508/- towards medicines. The amount of Rs.10,000/- for pain and suffering is also proper. When these amounts are added to the amount of Rs.1,34,640/- towards loss of earnings, total amount would come to Rs.1,56,148/- (Rs.1,34,640/- + Rs.1,000/- + Rs.3,000/- + Rs.3,000 + Rs.4,508/- + Rs.10,000/-)

Accordingly, the Civil Miscellaneous Appeal is allowed and the award of the Tribunal is modified by enhancing the compensation from Rs.72,500/- to Rs.1,56,148/-. Since there was an order of remand and the amount is enhanced by this Court now, the enhanced amount of compensation shall carry interest at 9% p.a., from the date of petition till 23.06.2003, on which date the order of remand was passed by this Court on earlier occasion in CMA No.1395 of 1999, and from today till realization. The claimant is directed to pay deficit court fee before drafting the decree. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in this CMA shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 10.04.2018
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