HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SMT JUSTICE T.RAJANI

M.A.C.M.A.No.2117 of 2013

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

Assailing the award and decree, dated 30.3.2017, passed by the Chairman, Motor Accident Claims Tribunal-cum-III Additional District Judge, Tirupati (for short 'the Tribunal') in M.V.O.P.No.62 of 1998, the claimant preferred the present appeal seeking enhancement of compensation.

The brief facts of the case are that the claimant filed an application under Section-166(1)(a) of the Motor Vehicles Act, 1988, before the Tribunal claiming compensation of Rs.30 lakhs for the serious injuries and the permanent disability suffered by him in a road accident that occurred on 12.4.1996 at about 1 pm near the railway level crossing on Puttur-Renigunta road. It is stated that on that day while he was driving his Maruti Car bearing registration No.AP 02 2689, the driver of the TSRTC bus bearing registration No.TN-01-N-0235 drove the vehicle in a rash and negligent manner came in the opposite direction and dashed the Maruti car, as a result of which, the claimant received injuries.

Before the Tribunal, the respondent filed its counter disputing the manner in which the accident took place. It is their case that the driver of the Maruti car lost control over the vehicle leading to the accident and therefore, sought to dismiss the Claim Petition. They also disputed the age and the avocation of the claimant.

Based on the above pleadings, the Tribunal framed the following issues:

> "1.Whether the petitioner sustained permanent disability on account of the injuries received by him due to rash and negligent driving of the bus TN-01-N-0235 by its driver?
>
> 2. Whether the petitioner is entitled to receive the compensation and if so, to what amount?
>
> 3. To what relief?"

During the course of enquiry, the claimant examined P.Ws.1 to 6 and got marked Exs.A-1 to A-15. On behalf of the respondent, R.W-1 was examined but no documents were marked.

After appreciating the evidence on record, the Tribunal awarded a sum of Rs.3,53,000/- as compensation with interest @ 7.5% per annum from the date of the petition till the date of realisation. Assailing the same, the claimant filed the present appeal.

In spite of service of notice on the respondent-Corporation, there is no representation on its behalf.

Heard learned counsel for the appellant-claimant and perused the record.

Mr. P.Gangarami Reddy, the learned counsel for the appellant, mainly submits that having given a finding that the claimant was doing silk saree business in Dharmavaram, the Tribunal erred in fixing his income at Rs.5,000/- per month; that the Income Tax Statements for the Assessment Years 1995-96, 1996-97 and 1997-98 would show that he was earning nearly Rs.3 lakhs per annum; that as the claimant was aged 36 years at the time of accident, the multiplier adopted by the Tribunal for calculating the loss of income was incorrect; and that the Tribunal erred in not taking the future prospectus of the claimant.

Since the mode and manner in which the accident took place is not in dispute, it may not be necessary for us to deal with that aspect. We are constrained only to deal with the quantum of compensation awarded by the Tribunal.

The findings of the Tribunal in paragraph-9 of the impugned award, Ex.A-12-Registration Firm Certificate and Ex.A-13-Auditor Certificate would show that the claimant was doing silk saree business at Dharmavaram. But, however, there is no evidence to show as to the nature of saree business he was doing *i.e.*, whether he was running a shop or whether he was doing sale of sarees by going from house to house, but the Tribunal took the income of the claimant at Rs.5,000/- per month.

It is no doubt true that the claimant has produced the Income Tax Statements for the Assessment Years 1995-96, 1996-97 and 1997-98, but these statements are self-styled documents, which are signed by an Advocate-cum-Tax Consultant. The claimant failed to produce the Income Tax statements filed in the Office of the Income Tax Department. He did not make any effort to examine the officer concerned from the Income Tax Department to show as to whether any Returns were filed in the Department showing his income as Rs.3 lakhs per annum.

Having regard to the above, we feel that the Tribunal has rightly not considered the Income Tax Statements filed by the claimant for assessing his income. But, however, having regard to the fact that the claimant was doing silk saree business and was also owning a Maruti Car in the year 1995, we feel that assessing his monthly income at Rs.5,000/- appears to be on a lower side. Hence, in the facts and circumstances of the case, the same is raised to Rs.10,000/- per month.

The evidence on record, particularly the evidence of P.Ws.4 to 6 would show that the claimant has suffered 25% permanent disability. P.W-4 in his evidence deposed that after the surgery, the claimant developed wrist drop, for which he was given physiotherapy including electrical stimulations and exercises. Similarly, P.W-5 in his evidence deposed that he is a Medical Practitioner in MIOT, Chennai, since 10 years and that on 21.5.1996, he treated the claimant for fracture of soft of humerus and he opined that the claimant has suffered permanent disability of 25% on left hand and 25% in the right leg. P.W-6, who is an Orthopaedic Surgeon, deposed that on 29.5.1996, he examined the claimant and gave treatment to the fracture of soft of humerus. He also opined that the claimant is suffering from restricted movements of right knee joint and has permanent disability of 25% in right knee. Ex.A-10 is the Permanent Disability Certificate issued by P.W-6, which show that the claimant suffered 25% permanent disability. Thus, from the evidence of P.Ws.4 to 6 coupled with Ex.A-10, it is clear that the claimant suffered 25% permanent disability.

As regards the future prospectus, the Apex Court in N***ational Insurance Company Limited v. Pranay Sethi and Others***[1], categorically held that while determining the income of the deceased, who had a permanent job and was below the age of 40 years, an addition of 50% to the actual income of the deceased towards future prospects should be made.

Applying the aforesaid ratio and taking the actual monthly income of the claimant as Rs.10,000/-, 40% has to be added while calculating loss of future prospects, which comes to Rs.14,000/- and the annual income would come to Rs.1,68,000/-. As the claimant suffered 25% permanent disability, the loss of income would come to 25% of Rs.1,68,000/- i.e., Rs.42,000/-.

As the age of the deceased is 36 years at the time of the accident, the suitable multiplier to be adopted in view of the judgment of the Apex Court in ***Sarla Verma Vs.. Delhi Transport Corporation***[2] is 15. Applying multiplier of '15', the claimant is entitled to Rs.42,000/- x 15 = Rs.6,30,000/- as compensation.

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[1] (2017) ACJ 2700
[2] (2009) 6 SCC 121

Accordingly, the appeal is partly allowed and the impugned award of the Tribunal is modified enhancing the compensation from Rs.3,53,000/- to Rs.6,30,000/-. However, there shall be no order as to costs.

As a sequel, the Miscellaneous Petitions, if any, pending shall stand dismissed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE T.RAJANI

25th July 2018
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