THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A No. 1887 of 2009

JUDGMENT:

This appeal arises out of the judgment dated 18.02.2009 passed in O.P.No.388 of 2006 by the XXII Additional Chief Judge-cum-Motor Accidents Claims Tribunal, City Criminal Court, at Hyderabad.

2. The appellant has filed a petition under Section 166 of the Motor Vehicles Act, against the respondents, claiming compensation of Rs.5,00,000/- on account of the injuries sustained by him in the motor vehicle accident occurred on 20.12.2005 at 3:00 PM near Shanti timber Depot, IDA Bollarum Miyapur, while the appellant was proceeding towards Miyapur on motorcycle bearing No.AP-9AC-6158 as pillion rider, driven by his friend Krupasagar, one lorry bearing No.AP-21U-8079 driven by its driver in a rash and negligent manner dashed the motorcycle of the appellant from behind due to which the appellant and his friend fell down and sustained multiple grievous injuries.

3. The Tribunal, on consideration of the evidence of witnesses PWs.1 to 5, and the documents Exs.A1 to A13, has allowed the petition in part, awarding compensation of Rs.2,86,042/- with interest at 9% per annum, directing the respondents, to deposit the amount within a period of three months from the date of the order. Having not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has preferred this appeal for enhancement of compensation.

4. Heard the arguments of learned counsel for the appellant. Smt. V. Durga appeared on behalf of the respondents.

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

6. The petitioner has filed a claim petition before the Tribunal claiming Rs.5,00,000/- on account of the injuries sustained by him in the accident. The Tribunal held that the driver of the crime lorry bearing No.AP-21U-8079 had driven it in a rash and negligent manner. Consequently, the respondent No.1 owner, and respondent No.2, oriental insurance company vehicle, were held liable to pay the compensation.

7. Since this appeal pertains to the year 2009, it is taken up for disposal on merits after hearing the learned counsel for the appellant and considering the material on record.

8. The contention of the appellant is that the Tribunal has not taken into consideration the occupation of the appellant as tailor. The notional income of the appellant was assessed by the Tribunal as Rs.15,000/- per annum which is not even minimum wages earned by a labourer. Therefore, it is argued that the notional income of the appellant may be taken into consideration reasonably for assessment of loss of earnings due to the disability suffered by the appellant.

9. The appellant got examined PWs.1 to 5 to prove his case. He examined PWs.3 and 4 who are employees working along with him to prove his income as a tailor by profession. The Tribunal has disbelieved

the evidence of PWs.3 and 4 as their evidence was only oral evidence not supported by any documents to prove that the appellant was running a tailor shop at Bollarum and was earning Rs.10,000/- per month. The Tribunal has taken the notional income of the appellant as Rs.15,000/- per annum.

10. In fact, there is evidence of PWs.3 and 4 on record to the effect that the appellant was working as a tailor and was earning Rs.10,000/- per month. No doubt there is no proof of income for the appellant that he was earning Rs.10,000/- per month. In fact, the appellant ought to have filed income tax returns or salary vouchers to prove his income if he had. However, he examined his co-employees and therefore their testimony with regard to the proof of income was rightly disbelieved by the Tribunal as the income is not supported by any material. However, in view of the fact that the appellant was a tailor by profession, his income ought to have been taken into consideration as Rs.4,500/- per month. Ordinarily, the Courts are taking the notional income of a labourer working in an unorganized sector as Rs.3,000/- per month. Since the appellant is working as a tailor, a skilful job, he is entitled to be considered as earning Rs.4,500/- per month.

11. In **Laxmi Devi v. Mohammad Tabbar**[1], the Hon' ble Supreme Court held as under:

> **"The High Court confirmed the earlier findings regarding the negligence of death. However, the High Court came to the conclusion that though the claim of the income of Rs.4200/- per month was not reliable, the notional income should have been held to be Rs.36,000/- per annum, i.e., Rs.3,000/- per month. For this proposition the High Court held that the**

[1] (2008) 12 SCC 165

> **notional income of Rs.15,000/- in the Second Schedule was prescribed in the year 1994 while the accident had taken place in the year 2004. The second reason given by the High Court was that even an unskilled labourer, these days, can easily earn Rs.100/- per day and Rs.3,000/- per month and, therefore, the High Court held the income to be Rs.36,000/- per annum and by deducting 1/3rd of the income of the deceased for his personal expenses, the claimants dependency was assessed at Rs.24,000/- per annum."**

12. In **Mohammad Tabbar** (1 supra), the accident occurred in the year 2004, and the Hon' ble Supreme Court has affirmed the findings of the High Court in taking the notional income of an unskilled labourer as Rs.3,000/- per month in the said judgment.

13. In the instant case, the accident occurred in the year 2009. The appellant being a tailor by profession can be categorized as a skilled labour. Therefore, in the given set of circumstances, the notional income of the appellant can be taken into consideration as Rs.4,500/- per month.

14. The other contention of the learned counsel for the appellant is that the Tribunal has not awarded the future prospects. The appellant was aged about 33 years by the date of accident. As per **Sarla Verma v. Delhi Transport Corporation**[2], the multiplier applicable is '16'.

15. It was held in **K. Suresh v. New India Assurance Company Limited**[3] that despite many a pronouncement in the field, it still remains a challenging situation warranting sensitive as well as dispassionate exercise how to determine the incalculable sum in calculable terms of money in cases of personal injuries. In such assessment, neither sentiments nor

---

[2] (2009) 6 SCC 121
[3] (2012) 8 SLT 676

emotions have any role. There should be grant of just compensation. Thus, it becomes a challenge for a Court of law to determine a just compensation which neither be a bonanza, nor a windfall, and simultaneously should not be a pittance. However, it would involve some guess work as there cannot be any mathematical exactitude or a precise formula to determine the quantum of compensation. In determining the compensation, the fundamental criteria is of just compensation.

16. In **Panna Singh v. Himangshee Karmakar**[4] It is well settled that the Tribunal has to determine the fair amount of compensation to the victim of any accident or to the dependent of the deceased which must be proportionate to the injuries caused to him or for the cause of his death and the Tribunal/Court cannot go by the ready reckoner.

17. It is also pertinent to refer to the decision in **Orissa State Road Transport Corporation v. Shanker Sahu**[5], wherein it was held that the claims Tribunal is not bound to confine amount of compensation to Schedule in Workmen's Compensation Act while determining compensation under Motor vehicles Act.

18. In the instant case, the compensation awarded by the Tribunal is based on the income of the injured as Rs.15,000/- per annum. The notional income taken by the Tribunal is very meager and, therefore, in the light of the above judgment, an amount of Rs.4,500/- is taken as notional income per month. The age of the deceased was 33 years and, therefore, the multiplier '16' is applicable as per **Sarla Varma** (2 supra), for

[4] AIR 1997 Gau 112
[5] 1989 ACJ 867 Ori

calculation of future prospects. In **Mohan v. Oriental Insurance Company Limited**, the Hon' ble High Court of Karnataka has taken a view that in a case of injuries, future prospects can also be awarded keeping in view the age of the boy. The ratio in the decision is that future prospects of life can be awarded in case of injuries. As far as the ratio is concerned, it would be appropriate to refer to the case in **National Insurance Company Ltd., v. Pranay Sethi and others**[6], wherein the future prospects of deceased person were taken into consideration.

19. In the instant case, though it is a case of injuries, the future prospects of the injured also would be affected depending upon the percentage of disability suffered by him. It is appropriate to refer to **Reshma Kumari v. Madan Mohan**[7], wherein the Hon' ble Apex Court (3-judge Bench) has clearly held that the determination of compensation based on multiplier method is best available means and the most satisfactory method and must be followed invariably by the Tribunals and the Courts.

20. Therefore, taking into consideration the notional income of the appellant as Rs.4,500/- per month, his annual income comes to Rs.4,500/- x 12 = Rs.54,000/- per annum. Taking into consideration the disability of 80%, the loss of earnings per year would come to Rs.43,200/-. Applying the multiplier '16', the total loss of earnings due to the disability would come to Rs.43,200 x 16 = Rs.6,91,200/-. The amount of Rs.40,000/- awarded by the Tribunal towards pain and suffering on account of grievous

[6] 2017(3) G.L.H. 536
[7] (2013) 9 SCC 65

injuries, and the medical expenditure of Rs.22,042, and Rs.15,000/- towards extra nourishment, transport and other expenses, shall be intact. Therefore, the appellant is entitled for a total compensation of Rs.7,68,242/-.

21. In the result, the appeal is allowed, enhancing the compensation from Rs.2,86,042/- to Rs.7,68,242/-. The Tribunal has awarded interest at 9% per annum from the date of petition till realisation.

22. The award of rate of interest is the discretion of the Tribunal, and the Tribunal has properly exercised its discretion and awarded the interest at 9% per annum considering the facts and circumstances of the case. Since the claimant has preferred this appeal, and the insurer has not preferred any appeal challenging the award, the rate of interest awarded by the Tribunal at 9% per annum from the date of petition till realization does not require any interference.

23. The appellant is directed to pay the Court fee for the compensation awarded over and above the compensation claimed in the original petition, within three weeks from the date of receipt of a copy of this order. The respondents are directed to deposit the compensation amount within one month from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the amount after paying the Court fee as directed above.

GUDISEVA SHYAM PRASAD, J

23rd November, 2018

KSM

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

M.A.C.M.A No. 1887 of 2009

23rd November, 2018

KSM