

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON'BLE SMT JUSTICE K.VIJAYA LAKSHMI

M.A.C.M.A.No.1187 OF 2008

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

1. Not being satisfied with the quantum of compensation awarded by the III Additional Chief Judge, City Civil Court, Hyderabad in M.V.O.P.No.1111 of 2005, the present Appeal is filed by the claimant under Section 173 of the M.V. Act.

2. The facts in issue are as under:-

The claimant, who is an injured in the accident that took place on 13.02.2005, filed a petition under Section 166 of the M.V.Act, claiming compensation of Rs.5,00,000/-, which was subsequently enhanced to Rs.73.65,000/-. It is averred in the petition that the petitioner, who was aged about 35 years, was working as a private lecturer in several institutions and earning Rs.30,000/- per month, which was subsequently amended to Rs.40,880/- per month. It is said that on 13.02.2005 at about 3.00 p.m., while he was proceeding on his motorcycle bearing No.AP-36K-5026, along with his friend Mr. Jaidev, towards Hanumakonda and when the said vehicle reached B.B.Nagar bridge, another motorcycle bearing No.AP -10-AR/TR-6393 driven by the first respondent, in a rash and negligent manner is said to have hit against the motorcycle of the petitioner. As a result of which, the petitioner fell down and received a

crush injury to his right foot, fracture of patella lower pole right, fracture of right femur and fracture of both bones of right forearm with pill injury, fracture of right hand, right leg, right knee, head and dislocation of tarso metatarsel joints and injuries all over the body. Immediately thereafter, he was taken to Kamineni Hospital and from there to Apollo Hospital. It is stated that he underwent operations and spent huge amount for the treatment. In respect of the said incident, a case in Cr.No.14 of 2005 of B.B.Nagar Police Station, Nalgonda was registered on 13.02.2005 for the offences punishable under Sections 337 and 338 IPC against the driver of the crime vehicle and a charge-sheet was also filed against him, which was taken on file as C.C.No.228 of 2005 on the file of the Additional Judicial Magistrate of Bhongiri. In view of the nature of injuries sustained, the petitioner is not able to lead a free life and his movements are very much extracted. It is said that he is not in a position to earn in the manner in which he was earning prior to the incident, since he cannot stand and teach the students. Hence, it is pleaded that he sustained 100% loss of earnings and is entitled for the amounts claimed.

The first respondent, who is the owner of the vehicle, remained exparte and the second respondent filed counter denying the averments made in the petition. It was stated that the driver of the offending vehicle was having only a learner licence and as such the conditions of the licence are violated. It is further stated in the counter that there is a

contributory negligence of the petitioner in respect of the accident and that the petitioner did not sustain any loss of earnings and there is no total or partial disability to any of his limb. Hence, pleads that the amount claimed is highly excessive.

3. Basing on the material available on record, the trial court framed the following issues for trial:

1. Whether the accident occurred on 13.02.2005 at about 3.00 p.m., due to rash and negligent driving of the motorcycle bearing No.A.P.-10-AR/TR-6393 by its driver causing permanent disability to the petitioner?
 2. Whether the petitioner is entitled to the compensation and if so, to what amount and from which of the respondents?
 3. To what relief?
4. In support of their claim, the petitioner examined PWs.1 to 5 and got marked Exs.A-1 to A-6 and Exs.X-1 to X-3, while the respondent examined R.W.1 and got marked Exs.B-1 to B-5.
5. After considering the rival arguments advanced and the evidence on record, the trial court held that the earning of the petitioner per month would be around to Rs.10,000/- and since the incident in question was head on collision and both the drivers are equally negligent, awarded 50% of the total compensation awarded. Assailing the same, the present appeal came to be filed.

6. Leaned counsel for the appellant mainly submits that the finding of the trial court that there was negligence of the appellant-driver while driving his motorcycle is absolutely incorrect. He took us through the FIR, charge-sheet; and the order in O.P.No.1063 of 2005 filed by the pillion rider of the motorcycle driven by the appellant, to show that the findings are incorrect. He further submits that the trial court totally erred in taking the income of the appellant as Rs.10,000/- per month. It is urged that the appellant was working as a Lecturer not only in Nagarjuna Cooperative Junior College but also in other private institutions on hourly basis by taking classes in the evenings. According to him, the certificates issued by the said authorities and the evidence of P.Ws.4, 5 and 6 would establish that he was earning Rs.40,000/- per month. The learned counsel for the appellant further contended that the trial court erred in not considering the loss in future prospects and also erred in taking the disability of the appellant at 40% when the evidence on record shows that he was not in a position to work in the same manner and earn the same money as he was earning prior to the accident. In fact, it is his case that after the accident the authorities of the institutions where he was working, removed him from service. He further pleads that the multiplier adopted for calculating the loss in income is also not correct.

7. On the other hand, the learned standing counsel for the insurance company would contend that the appellant intends to make a fortune out

of a mis-fortune. It is his plea that the documents which are sought to be placed on record are all fabricated and invented for the purpose of this case. It is his case that if really the appellant was earning Rs.40,000/- per month, nothing prevented him from filing income tax returns to show the income earned, which would have proved his case substantially. He further pleads that the grounds raised in the appeal only relate to the quantum of compensation, and no issue was raised as to the role of the appellant in the accident. In other words it is urged that there was no comment on the finding of the trial Court regarding the contributory negligence of both the drivers of the vehicles. He further submits that when the salary of a B.Tech was fixed at about Rs.12,000/- in the year 2012, it is very difficult to believe that the appellant, who has completed only M.A., B.Ed., at that time, could have earned Rs.40,000/- by way of giving tuitions. Learned counsel for the respondent would further contend that the judgment in O.P.No.1063 of 2005 cannot be relied upon as it relates to pillion rider, whose case stands on different footing as that of the rider of the vehicle. The educational qualifications, which are now sought to be relied upon by the appellant were obtained after the accident and as such the same cannot be made a basis to say that he was highly qualified. He further submits that in the absence of any driving licence being produced and as the pillion rider was not examined to prove the manner in which the incident was happened, the finding of the trial court with regard to contributory negligence cannot

be brushed aside. But, however he admits that the multiplier adopted by the trial court is incorrect and the proper multiplier would be "16" in view of the judgment in *Sarla Verma v. Delhi Transport Corporation*¹.

8. The questions that arise for consideration are "Whether the drivers of both the vehicles were negligent and whether the compensation awarded by the trial court was just and proper?"

9. Though the learned counsel for the respondent would contend that no plea was taken disputing the contributory negligence in the grounds of appeal but on 02.01.2018 additional grounds came to be filed vide MACMA MP No.1 of 2018, wherein a specific ground was alleged stating that the appellant is not at all responsible for the accident. No counter is filed opposing the said plea. Hence, the said M.P. is allowed. Hence, we proceed to decide as to whether there was any contributory negligence by the appellant. In order to appreciate as to whether there was any contributory negligence and that the drivers of both the vehicles were responsible for the accident, it would be useful to refer to the oral evidence of P.W.1, FIR, charge-sheet and the order in O.P.

10. P.W.1 in his evidence in chief deposed that on 13.02.2005 at about 3.00 p.m., while himself along with his friend Jayadev were proceeding on T.V.S. victor motorcycle bearing No.A.P.36-K-5026 from Hyderabad towards Hanmakonda, and they reached Bibi Nagar, a motorcycle bearing

¹ 2009 ACJ 1298

No.A.P.10-AR/TR-6393 came in opposite direction by overtaking a lorry, driven by its driver in a rash and negligent manner and dashed the appellant's vehicle. As a result of the said accident, the appellant and his friend fell down and received various crush injuries and fractures on various parts of the body, which will be discussed later. Immediately thereafter the injured was shifted to Bhuvangiri Area Hospsital where he was given first aid, from there he was shifted to Kamineni Hospital and then to Apollo Hospital. His evidence discloses the injuries sustained by him on various parts of the body. The evidence also discloses that a plastic surgery was conducted by taking split skin graft from right thigh and applied over right foot. His evidence further discloses that the DCP plates were fixed at the time of his operation. His evidence further discloses that due to the injuries sustained, which remained un-healed, he cannot sit; that he cannot move from the bed and even he cannot stand for five minutes. It is further stated that he cannot write with his hand due to the fractures sustained by him. His evidence is to the effect that at the time of the accident he was working as a Lecturer in Sriveni Entrance College and used to earn a sum of Rs.5,500/- per month. Apart from that he was also working in Nagarjuna Cooperative Cooperative Junior College where he used to get consolidated pay of Rs.25,000/- per month. His evidence further discloses that he used to work in Vagadevi Junior College, Nakalagutta, Warangal district, where he was paid Rs.10,380/- per month. He further deposed that after the accident he

was removed from service. He placed on record the certificates showing the expenditure incurred and the loss in earnings.

11. P.W.1 was cross-examined at length. In his cross-examination he admits that he has not mentioned about the calculations in the evidence in chief and also about experience and date of appointment in the said colleges. He further admits that he is not a permanent income tax assessee but the certificates issued show that the tax was deducted by the employer. But, however he has not produced the TDS certificates to show the ratio of the taxes. He further admits that he has not filed any documents to show his employment and the receipt of alleged salary pay-slip. He admits that his employment is contractual and may be extended every year but not a permanent one. He further admits that he has not filed the agreement of contract about his employment. His evidence in cross, further discloses that he worked in the College upto January, 2005 and that he has not filed any college attendance register except the termination letters and he has not filed any document to show termination from the service. He states that he used to get salary by way of cash, after taking a receipt and by signing on account books, but however no such receipts are filed and even the accounts books were not summoned. He also admits that he has not received any termination notice. To a suggestion that the certificates produced are fabricated, was denied. To a suggestion that he never worked in such college and that he has not received any such salary, was also denied. He further states

that he used to work from 5.00 a.m., to 8.00 p.m. To a suggestion that he was not giving tuitions and not getting any income from tuitions was also denied. To a suggestion that he was not having driving licence was denied but states that he has brought the driving licence, which was shown in the court and the same was recorded in the evidence. He further states that the opposite vehicle came in a rash and negligent manner while overtaking a lorry and dashed in opposite direction. On observing the movement of the vehicle from a distance of 2 to 3 feet, though he stopped his vehicle, the opposite vehicle came and dashed his vehicle. The remaining part of the cross-examination of the witness mainly relate to the expenditure incurred, which is not very much disputed by the respondents herein.

12. R.W.1 was working as a Area Manager in second respondent's company. His evidence is to the effect that the owner of the vehicle by name B.Satyanarayana submitted damage claim form along with driving licence of the driver-Anil. After conducting investigation a report was submitted along with the copy of the driving licence and FIR, which shows that a crime was registered against Anil and that the driver was not having a valid driving licence which does not satisfy the requirements of Rule 3 of Central Motor Vehicle Rules.

13. With regard to the finding of contributory negligence, it is to be noted that the cross-examination of P.W.1 nowhere indicates the role of the appellant in the accident. It was not even suggested to this witness

that there was a head on collision and that both the drivers were responsible for the accident. Similarly even R.W.1 in his evidence never deposed about contributory negligence of the appellant. Apart from that, a reading of the FIR and the charge-sheet filed after the investigation does not show that the appellant was in any way responsible for the accident. On the other hand, the investigation done by the Sub Inspector of Police, B.B.Nagar P.S., shows that on the date of incident L.Ws.2 and 3 went to Hyderabad from Warrangal for attending their personal works and after attending their works they were returning to Hanmakonda on their motorcycles. When they reached outskirts of Bibinagar, the vehicle driven by one Anil in rash and negligent manner came from Yadagirigutta side and dashed their vehicle, as a result L.Ws.4 and 6 received serious injuries and the accused also received simple injuries. Therefore, a reading of the FIR and charge-sheet clearly shows that it was the driver of the offending vehicle, who was responsible for the accident. If really, there was a head on collision and that the accident occurred due to the negligence of both the drivers, the respondents ought to have produced oral and documentary evidence in support of their plea. Neither the sketch of the scene of offence was not marked nor the investigating Officer, who conducted investigation in the said crime was summoned to speak about the incident. Further, there is a clear finding in the order in O.P.No.1063 of 2005 filed by the pillion rider, that the accident was due to rash and negligent driving by the

driver of the crime vehicle. It has been stated across the bar that the said finding has become final, though it is not binding on us but still the same can have some persuasive value. Insofar as the plea that the appellant was not having driving licence, it is to be noted that during the cross-examination a suggestion was given to that effect but P.W.1 produced the same before the court, which was also recorded. Further, the learned counsel for the appellant filed a memo before this court enclosing a copy of the licence. No counter is filed by the Insurance Company opposing the same, though this document was filed in the month of December, 2017. Therefore, we feel that the finding of the trial court that there was contributory negligence by the appellant on the two scores cannot be accepted.

14. Coming to the quantum of compensation to be paid, as stated earlier there is no much dispute with regard to the surgeries undergone, the treatment taken and the expenditure incurred towards the treatment by the appellant. The dispute mainly relates to the earnings of the appellant, the disability sustained and the loss in future earnings. Provisions of Motor Vehicles Act make it clear that the award must be just, which means that the compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or the Tribunal shall have to

assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. *Raj Kumar Vs. Ajay Kumar and another*²

15. It is also to be noted that the compensation to be awarded cannot be a wind fall, but one fact which should be born in mind that the Motor Vehicles Act is a beneficial legislation and interest of the claimant should be of paramount consideration. Keeping this in mind we shall now proceed to deal with the quantum of compensation to be awarded. The applicability of multiplier "14.81" which was adopted by the trial court is admittedly said to be incorrect as both the counsel admit that in view of **Sarla Verma's case** (1 supra) the suitable multiplier would be "16".

16. With regard to non-pecuniary damages, the trial court awarded a sum of Rs.50,000/- towards crush injury, Rs.7,10,888/- towards loss of future income (50% only due to contributory negligence), Rs.7,125/- towards bills at Kamineni Hospital, Rs.1,37,458/- towards bills at Apollo Hospital, Rs. 20,000/- towards pain and suffering, Rs.15,000/- towards loss of amenities, Rs.15,000/- towards future operation expenses and Rs.10,000/- towards nutritious food, transport and assistance, which worksout to Rs.9,65,471/-. Out of which, the disability was assessed is 50% and thus total amount of compensation was awarded at Rs.4,82,750/-. This figure was arrived at by taking the income of the

² MACD 2011 (SC) 33

appellant at Rs.10,000/- per month. It is to be noted here that the amounts incurred at Kamineni Hospital, Apollo Hospital and towards crush injury are not seriously disputed.

17. Coming to the income earned by the appellant, as on the date of incident, the educational qualifications of the appellant was M.A., B.Ed. Subsequent to the date of accident he is said to have obtained his Doctorate in Philosophy from Kakatiya University. Apart from that, the appellant also obtained a degree in Masters of Arts from Kakatiya University in the year 1993 itself. The appellant was also having a degree in Batchelor of Education from Annamalai university, secured in the year 1991. As stated earlier, the Doctorate was obtained after the accident but as on the date of accident he was having M.A., B.Ed. However, as observed earlier, in the cross-examination P.W.1 admits that he did not produce any appointment order in any of the institutions where he used to take classes nor did he produce any pay slips to show the amount of salary that was paid to him. He neither placed on record any income tax returns showing his salary nor did he summon account books wherein he acknowledged receipt of the salary. But, however he examined P.Ws.4, 5 and 6 and also got marked the salary certificates issued by the three institutions viz., Vagadevi Junior College, Nagarjuna Cooperative Junior College and Sri Veni Entrance College as Exs.P-10 to P-12 to show the salary and other particulars. The trial court while considering the said issue found that since he was working as a contract lecturer and since

neither income tax returns, nor TDS certificates nor the ledger books of the colleges where the appellant is said to have endorsed about the receipt of the salary, are filed, the court found that the salary certificates which are issued have no value. Since the income tax returns were also not filed, the trial Court held that injured was getting income below the tax limits. Having said so, the trial court fixed the income of the appellant at Rs.10,000/- per month. There was no basis to come to the said conclusion, as neither any documentary evidence is placed on record to show the income earned by the appellant nor any authority is produced to prove the same. At this stage, it would be useful to refer to few of the judgments, so as to fix the income of the appellant.

18. In **Syed Sadiq etc. Divisional Manager, United India Ins. Co.**³ the Apex Court while dealing with a case where the accident took place in the year 2008, the Vegetable vending worker claimed an amount of Rs.10,000/- per month, but the court has fixed the income of the said vegetable vendor at Rs.5,000/- per month.

19. In **State of Haryana and another v. Jasbir Kaur and others**⁴ the Apex Court while dealing with a case of a person who was dealing with sale and purchase of cattle and selling milk, took his income at Rs.3,000/- per month. It was a case where the accident took place in the year 1999.

³ AIR 2014 Supreme court 1052

⁴ 2003 ACJ 1800

20. In **Shivakumr M. v. Managing Director, BMTC**⁵ the Apex Court while deciding the quantum of compensation to an injured, who was a painter, in respect of an accident that occurred in August, 2013, fixed his income at Rs.15,000/- to Rs.16,500/- per month.

21. In **D.Sai Kumar v. Jyothi Transport Service, Secunderabad and another**⁶, a learned single Judge of this Court while deciding the claim made by the injured in respect of an accident that took place in the year 2011, assessed the income of the claimant who was working as Marketing Manager in a private firm, at Rs.20,000/- per month.

22. A Division Bench of this Court in **B.Ramulamma v. Venkatesh Bus Union, Lingarajapuram, Bangalore and another**⁷ fixed the minimum income of an Engineering Graduate at Rs.12,000/- per month. Having regard to the evidence adduced by the claimant in the form of P.Ws.5 and 6 and taking into consideration the educational qualification which the appellant possessed at the time of the accident and which he acquired subsequently viz., Doctorate in Philosophy from Kakatiya University, we feel that the appellant is a person who is pursuing his career with lot of zeal and enthusiasm, overcoming his physical disabilities. Though the witness in his evidence admits that he has not produced any documents to show that he was working in three colleges,

⁵ (2017)5 SCC 79.

⁶ 2018(2) ALD 709

⁷ 2009(6) ALD 684 (DB)

but at the same time it cannot be said that he would have been idle, having acquired B.Ed., and also a Post Graduate degree. Definitely he must have been working as a lecturer imparting education to the students, either on part time basis or on hourly basis, as done in Colleges where teaching was given for entrance examinations and other professional courses. Our view gets support from P.W.2, the Doctor, who treated the injured. In his evidence, he states that the claimant was working as a Lecturer and that he can continue with his profession and give lectures by sitting. The same is reflected in the certificates issued by the medical board and in the medical certificates issued by the hospital. Therefore, the fact that he was working as a Lecturer and giving lectures to students in junior colleges in subjects like Mathematics, Science and English cannot be doubted. But the issue is with regard to quantum of salary, paid or earned by him. As stated earlier, neither the salary certificates, the monthly pay slips, the account books of the college where the claimant said to have made endorsement nor the income tax returns are filed to prove the income earned. Under those circumstances, we feel that it would not be just and proper to accept the amount claimed by the appellant though he placed on record certificate issued by all three colleges disclosing the amount paid by them. To give some authenticity to the said document, atleast TDS certificate showing the amount deducted from his salary and remitted to the bank, should have been filed. The fact that he was working as a

Lecturer is not disputed, since P.W.2 and the certificates issued clearly establish that he was working as a Lecturer. Even the finding of the court below was that he was working as a Lecturer but the dispute is with regard to quantum of earning only. Being physically handicapped to the extent indicated above, definitely no institution would like to continue his services. In fact P.W.1 in his evidence categorically deposed that after the accident he was removed by the colleges where he was giving lectures. No contra evidence has been adduced to show that the injured is earning after the incident. Even if he earns, the amount which he would be earning, would be very very less compared to what he would have, had he been normal. Hence, in order to award just and reasonable compensation and taking into consideration the object of the Motor Vehicles Act, we deem it appropriate to fix the income at Rs.15,000/- per month. One other thing, which weighed in fixing the income at Rs.15,000/- is that, in these years there is a craze for taking tuition for entrance examination with a hope that one would easily get admission into the professional courses like Engineering and Medicine through EAMCET if one studies in the said Colleges. Having regard to the above and taking into consideration the craze with which the students who are aspiring for medical and engineering admissions, join in these private institutions by paying high fees and the demand which the lecturers teaching in Mathematics and Science have, we feel that the appellant would be earning about not less than Rs.15,000/- per month.

23. Coming to the disability which the appellant sustained, the claimant placed on record Ex.A-9-the disability certificate issued by the medical board and the evidence of P.W.2-the Doctor who treated him. P.W.2 in his evidence deposed that P.W.1 was admitted on 14.02.2005 and had surgery on the same day and the second surgery was held on 17.02.2005. According to the Doctor, the appellant had multiple surgeries on his right foot, right knee and right leg. He also had plate and screw fixed in the right fore-arm bone and right arm bone. Multiple surgeries of the foot include debridement and skin grafting with wire fixation of foot bones and knee cap was also done. He further deposed that the claimant lost his right big toe along with its bone. The entire foot was deformed after the surgery. The skin grafting was done due to non-healing of wound. He estimated future operations at about Rs.45,000/-. He further admits that the appellant cannot stand well on his right foot nor can he walk.

24. Further, the certificate issued by the medical board dated 26.08.2005 would show that he was suffering with 65% disability. The certificate also shows that there was amputation of great toe, loss of right ankle joint, loss of acute movement in right foot sole and deformity of right little finger. A joint reading of the evidence of P.W.2 and the certificate issued would show that he was suffering with 65% disability, but the appellant can pursue his profession of lecturer and give lectures by sitting, meaning thereby that he will not be in a position to come and take classes to the students in the same manner as

he was doing earlier. Definitely this would be a great handicap, which is more disadvantageous to the profession of a lecturer, as no Lecturer of college can deliver lecture only in a sitting posture. Hence, the disability can be fixed at 65%.

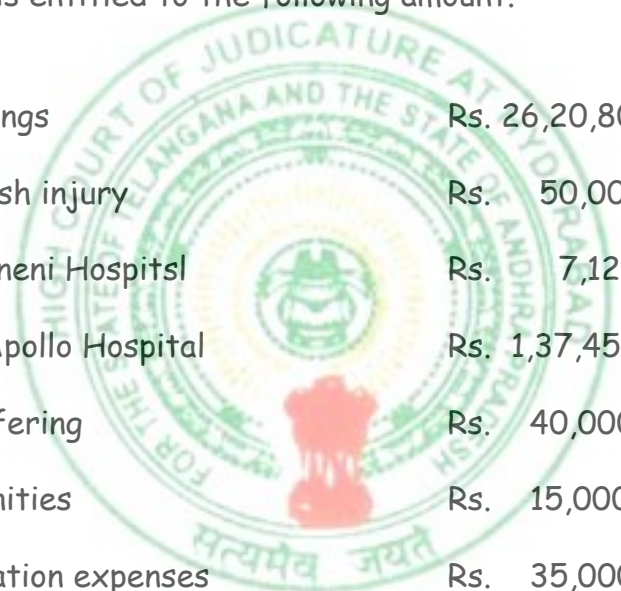
25. As the age of the appellant was 35 years at the time of the accident and taking into consideration the ratio laid down in **National Insurance Company Limited Vs. Pranay Sethi and others**⁸, we hold that the appellant is entitled to 40% of his income towards future loss of income. If the income of the claimant is taken at Rs.15,000/- per month and if 40% of it ie. Rs.6,000/- added to the income, towards future prospects, the same comes to Rs.21,000/-. As stated earlier, in view of the judgment of **Sarla Verma (1 supra)**, suitable multiplier for calculating the loss of earnings would be '16'. Therefore, the loss of earnings on account of 65% disability would be Rs.21,000/- x 12 x 16 x 65% = 26,20,800/- .

26. While confirming the amount towards crush injury and the medical expenses, we feel that the amount awarded towards pain and suffering i.e., Rs.20,000/- appears to be on lower side compared to the surgeries which he has undergone and the period for which he was bedridden after discharge from the Hospital. Hence, the amount of Rs.20,000/- awarded towards pain and suffering is enhanced to Rs.40,000/-. P.W.2 in his evidence categorically stated that the expenditure for future operations

⁸ (2017) ACJ 2700

would be around Rs.35,000/- to 40,000/-. Hence, an amount of Rs.15,000/- which was awarded towards future operation expenses is enhanced to Rs.35,000/- while confirming the loss of amenities at Rs.15,000/-.

27. Coming to the Nutritious food, transport and assistance, we feel that having regard to the nature of injuries sustained, an amount of Rs.10,000/- awarded under the said count stands confirmed. Thus, in all the petitioner is entitled to the following amount.



1. Loss of earnings	Rs. 26,20,800.00
2. Towards crush injury	Rs. 50,000.00
3. Bills at Kamineni Hospitals	Rs. 7,125.00
4. Bill paid at Apollo Hospital	Rs. 1,37,458.00
5. Pain and suffering	Rs. 40,000.00
6. Loss of amenities	Rs. 15,000.00
7. Future operation expenses	Rs. 35,000.00
8. Nutritious food, transport and assistance	Rs. 10,000.00

Total : Rs. 29,15,383.00

28. In the result, the appeal is partly allowed by enhancing the compensation from Rs.4,82,750/- to Rs.29,15,383/-. The enhanced amount will carry an interest at 7.5% p.a. from the date of filing of O.P. till the date of realization.

29. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal, shall stand closed.

C.PRAVEEN KUMAR, J

K.VIJAYA LAKSHMI, J

Date: 27.06.2018

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