

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A.NOs.1795 AND 2984 OF 2014

COMMON JUDGMENT:-

Since both the appeals arise out of a common order passed in O.P.No.82 of 2011, dated 23-03-2013, on the file of the Motor Accident Claims Tribunal-cum-Principal District Judge, Karimnagar, they are being disposed of by this common order.

M.A.C.M.A.No.1795 OF 2014:- This appeal is filed by the appellant/ respondent No.2 i.e., APSRTC., on the ground that the driver of the bus who is respondent No.1 in the above O.P., was not responsible for the accident and that the compensation awarded by the Tribunal is excessive and exorbitant.

M.A.C.M.A.No.2984 OF 2014:- This appeal is filed by the appellant/ claimant on the ground that the Tribunal awarded a meager amount of Rs.6,79,000/- against the claim of Rs.11,00,000/- for the fractures and injuries sustained by the appellant and the Tribunal erred in awarding an amount of Rs.1,00,000/- against the claim of Rs.5,45,000/- without taking into consideration of the disability certificate Ex.A10 issued by the R.M.O., Yashoda Hospital, Secunderabad, stating that the disability suffered by the appellant is assessed at 40%.

For the purpose of convenience, the parties are hereinafter referred to as they are arrayed in M.A.C.M.A.No.2984 of 2014.

2. The brief facts of the case are that on 8.2.2010 at about 7.00 PM., the appellant along with his wife and son boarded the RTC bus bearing No.AP-28-Z-4927 at Karimnagar to go to Hyderabad. When the bus reached the outskirts of Lakdaram village on Rajiv Rahadari, respondent No.1 drove the bus in a rash and negligent manner with high speed and dashed against a parked

lorry bearing No.AP-20-V-3501, as a result of which, the appellant and other inmates of the bus sustained severe injuries while the conductor of the bus died on the spot. The appellant was shifted to Government Hospital, Siddipet and from there to Gandhi Hospital, Secunderabad and later, he was shifted to Yashoda Hospital, Secunderabad on 9-2-2010, where he was admitted as an in-patient. After conducting several tests and investigations, the petitioner was found to have sustained (i) polytrauma with hypotensive shock, (ii) fracture supra condylar with inter condylar extension (femur left), (iii) right tibial plateau – Schatzker Type-VI, (iv) left bennet's fracture open and (v) mild head injury. On 12.02.2010, the appellant underwent surgery for the fracture injuries. He was discharged on 17.02.2010 with an advise to have follow up treatment and complete bed rest for six months and with an application of POP to his both legs and also to have physiotherapy treatment.

3. The appellant filed a claim petition under Section 166 of the Motor Vehicle Act, 1988 (for short, the Act), claiming compensation of the Rs.11,00,000/- plus future medical expenses with interest by making the following assertions:-

- (i) that at the time of accident, the age of the appellant was 41 years;
- (ii) that the accident was occurred due to the rash and negligent driving of the bus;
- (iii) that due the accident, the appellant had sustained grievous injuries and remained in the hospital;
- (iv) that he had spent Rs.1,50,000/- by way of medical expenses;
- (v) that he was apprehensive of becoming disabled and that the same would result in loss of earnings and affect his livelihood; and
- (vi) that he would have to suffer constant pain and discomfort throughout his life.

4. In their written statements, respondents 1 and 2 denied the allegations of rash and negligent driving of the bus and pleaded that they are not liable to pay the compensation.

5. After considering the evidence produced by the parties, the Tribunal held that the accident was occurred due to the rash and negligent driving of the bus owned by respondent No.2. The Tribunal then considered the issue of compensation referred to the statement made by the appellant in the form of affidavit and also the statement of PW.2 Dr.Sanjeeb Kumar Behra, Yahsoda Hospital, Secunderabad and held that the appellant is entitled to compensation of Rs.6,79,000/- with interest at the rate of 7.5% per annum from the date of petition, till the date of actual deposit. Dissatisfied with the award of the Tribunal, the appellant filed the present appeal under Section 173 of the Act.

6. Heard Mr.Ramchandar Rao Vemuganti, learned counsel appearing for the appellant and the learned standing counsel appearing for the second respondent.

7. Learned counsel appearing for the appellant would submit that the Tribunal failed to consider that due to the accidental injuries, the appellant developed limping in his left leg due to shortening, for which disability was estimated at 40%. He further contended that due to the accident, the appellant lost his promotional chances and he is unable to sit, squat, fold his legs or walk normally, ride a two wheeler and that he is taking the help of a person for attending his duties. He further submits that the Tribunal failed to apply the multiplier for 40% disability sustained by the appellant taking into account the age and income of the appellant at the time of accident and erred in awarding

Rs.1,00,000/- towards loss of expectancy of amenities of life due to multiple fractures against the claim of Rs.5,45,000/-. The Tribunal also erred in awarding Rs.50,000/- towards future medical expenses against the claim of Rs.80,000/-.

8. The learned standing counsel appearing for the second respondent submits that the Tribunal has awarded excess compensation amount and the appellant is not entitled for any enhancement of compensation and the appeal is liable to be dismissed.

9. The point for consideration is:-

(i) whether the appellant is entitled for more compensation than the amount awarded by the Tribunal ?

or

(ii) Whether the compensation awarded by the Tribunal is excessive?

10. A perusal of the award reveals that the Tribunal has awarded a reasonable compensation incurred by the appellant towards the injuries sustained by him in the accident and also the expenses towards medicines, under the following heads:

Sl. No.	Head	Compensation claimed (in Rs.)	Compensation awarded (in Rs.)
1.	Fractures and head injury	1,00,000-00	90,000-00
2	Pain and suffering	50,000-00	50,000-00
3	Medical expenses	1,50,000-00	1,44,000-00
4	Loss of earnings	2,00,000-00	2,00,000-00
5	Loss of future amenities	5,45,000-00	1,00,000-00
6	Future medical expenses (not shown in claim petition)	80,000-00	50,000-00
7	Attendant charges	20,000-00	20,000-00
8	Extra nourishment	20,000-00	15,000-00
9	Transport	15,000-00	10,000-00
	Total	11,80,000-00	6,79,000-00

The award further reveals that the appellant has claimed a sum of Rs.5,45,000/- towards compensation for continuing effect of loss of future amenities on account of 40% disability. In support of his claim, he filed Ex.A10 disability certificate issued by the R.M.O., Yashoda Hospital, Secunderabad, wherein, the disability suffered by the appellant was assessed at 40%. The learned counsel for the appellant relied on the decision rendered in the case of New India Assurance Co.Ltd., V. Anuj Sharma and others¹, wherein the High Court of Delhi held that it is sufficient that the doctor who treated the claimant issues certificate and testifies about the disability, no matter whether the doctor is a private doctor.

11. The Tribunal has not appreciated the medical evidence properly in this case in respect of the disability suffered by the appellant. It is the case of the appellant that he suffered 40% disability due to the fractures sustained by him.

12. In Reshma Kumari V. Madan Mohan², the Apex Court reiterated that the compensation awarded under the Act should be just and also identified the factors which should be kept in mind while determining the amount of compensation. The relevant portions of the judgment are extracted below:

"The question as to the methodology required to be applied for determination of compensation as regards prospective loss of future earnings, however, as far as possible should be based on certain principles. A person may have a bright future prospect; he might have become eligible to promotion immediately; there might have been chances of an immediate pay revision, whereas in another (sic situation) the nature of employment was such that he might not have continued in service; his chance of promotion, having regard to the nature of employment may be distant or remote. It is, therefore, difficult for any court to lay down rigid tests which should be applied in all situations. There are divergent views. In some cases it has been suggested that some sort of hypotheses or guess work may be inevitable. That may be so.

¹ 2007 ACJ 640

² (2009) 13 SCC 422

In the Indian context several other factors should be taken into consideration including education of the dependants and the nature of job. In the wake of changed societal conditions and global scenario, future prospects may have to be taken into consideration not only having regard to the status of the employee, his educational qualification; his past performance but also other relevant factors, namely, the higher salaries and perks which are being offered by the private companies these days. In fact while determining the multiplicand this Court in *Oriental Insurance Co. Ltd. V. Jashuben* held that even dearness allowance and perks with regard thereto from which the family would have derived monthly benefit, must be taken into consideration.

One of the incidental issues which has also to be taken into consideration is inflation. Is the practice of taking inflation into consideration wholly incorrect? Unfortunately, unlike other developed countries in India there has been no scientific study. It is expected that with the rising inflation the rate of interest would go up. In India it does not happen. It, therefore, may be a relevant factor which may be taken into consideration for determining the actual ground reality. No hard-and-fast rule, however, can be laid down therefor."

13. In *Arvind Kumar Mishra V. New India Assurance Company Limited*³, the Court considered the plea for enhancement of compensation made by the appellant, who was a student of final year of engineering and had suffered 70% disablement in a motor accident. After noticing factual matrix of the case, the Court observed:

"We do not intend to review in detail state of authorities in relation to assessment of all damages for personal injury. Suffice it to say that the basis of assessment of all damages for personal injury is compensation. The whole idea is to put the claimant in the same position as he was insofar as money can. Perfect compensation is hardly possible but one has to keep in mind that the victim has done no wrong; he has suffered at the hands of the wrongdoer and the court must take care to give him full and fair compensation for that he had suffered."

14. In *Raj Kumar V. Ajay Kumar*⁴, the Court considered some of the precedents and held:

"The provision of the Motor Vehicles Act, 1988 ("the Act", for short) makes it clear that the award must be just, which means that 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

³ (2010) 10 SCC 254

⁴ (2011) 1 SCC 343

consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned.

The heads under which compensation is awarded in personal injury cases are the following: Pecuniary damages (Special damages)

- (i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.
- (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:
 - (a) Loss of earning during the period of treatment;
 - (b) Loss of future earnings on account of permanent disability.
- (iii) Future medical expenses.

Non-pecuniary damages (General damages)

- (iv) Damages for pain, suffering and trauma as a consequence of the injuries.
- (v) Loss of amenities (and/or loss of prospects of marriage).
- (vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and

- (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."

15. The ratio of the above noted judgments is that if the victim of an accident suffers permanent or temporary disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the pain, suffering and trauma caused due to accident, loss of earning and victim's inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident.

16. In the light of the above, I shall now consider whether the compensation awarded to the appellant is just or he is entitled to enhanced compensation under any of the following heads:

- (i) Loss of earning and other gains due to the accident.
- (ii) Loss of future earning on account of the disability.

- (iii) Expenses for future treatment.
- (iv) Compensation for pain, suffering and trauma caused due to the accident.
- (v) Loss of amenities.
- (vi) Loss of expectation of life.

17. The respondents have not contraverted the appellant's assertion that at the time of accident, his age was 41 years and that he was earning Rs.30,714/- per month towards his salary. It is also not in dispute that the appellant suffered 40% disability. The appellant has to suffer with the said disability in his future life. Therefore, this Court feels it just and proper to take into consideration 10% disability on account of the loss of future amenities suffered by the appellant. As per *Sarala Verma V. Delhi Transport Corporation*⁵, the appropriate multiplier that can be applied to the age of the appellant is 14. Taking into consideration the income of the appellant at Rs.30,714/- with 10% disability i.e., Rs.30,714 x 10% x 12, the annual income of the appellant comes to Rs.36,857/- and if the multiplier 14 is applied (36,857 x 14), the loss of future amenities suffered by the appellant comes to Rs.5,15,998/-, which is rounded off to Rs.5,16,000/- and the appellant is entitled for enhancement of compensation from Rs.1,00,000/- to Rs.5,16,000/- under the head loss of future amenities of life. Therefore, the compensation awarded by the Tribunal on all the heads is enhanced from Rs.6,79,000/- to Rs.10,95,000/-. Except the said enhancement, rest of the award remains un-changed. It is informed that the second respondent deposited 50% of the award amount at the time of admitting M.A.C.M.A.No.1795 of 2014 and the appellant has withdrawn the same. Therefore, the second respondent is directed to deposit the balance award amount and also the amount enhanced in

⁵ 2009 (6) SCC 121

M.A.C.M.A.No.2984 of 2014 with proportionate costs and interest, within one month from the date of receipt of a copy of this order. On such deposit being made, the claimant is entitled to withdraw the same without furnishing any security.

18. In view of the foregoing discussion, there are no merits in the appeal filed by the second respondent and accordingly, M.A.C.M.A.No.1795 of 2014 is dismissed. M.A.C.M.A.No.2984 of 2014 is allowed in part to the extent indicated above. Miscellaneous petitions pending if any shall stand closed.

Date: 16-11-2018
TSNR

T.AMAARNATH GOUD, J

