

HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.37 of 2012

JUDGMENT:

This appeal is filed by the appellant-claimant aggrieved by the Order and Decree dated 03-10-2011 passed in O.P.No.861 of 2010 by the XI Additional Chief Judge (FTC), City Civil Court, Hyderabad (for short, the trial Court).

2. Brief facts of the case are that on 16-12-2009 at 2.30pm at Shahalibanda, when the claimant was trying to board an RTC bus bearing No.AP-11-Z-2841, the driver of the said bus drove it negligently, due to which, he slipped and fell down, then the front left wheel of the bus ran over his leg and caused grievous injuries. Immediately he was shifted to the hospital. Hence, he filed the claim petition claiming compensation of Rs.3.00 lakhs for the injuries sustained by him against the respondent Nos.1 and 2-APSRTC.

3. In the claim petition, the respondents-RTC filed its counter denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition.

4. After considering the oral and documentary evidence on record, the trial Court came to the conclusion that the accident occurred due to the contributory negligence on the part of the claimant as well as the driver of the crime vehicle and made the respondents

liable to pay 50% of the total compensation. So far as quantum of compensation granted is concerned, the Trial Court granted an amount of 3,02,000/- i.e. Rs.2,16,000/- towards loss of dependency; Rs.8,000/- towards attendant charges for a period of four months; Rs.15,000/- towards pain and suffering; Rs.50,000/- towards loss of academic career; Rs.10,000/- towards loss of income and Rs.3,000/- towards transportation. Accordingly, it partly allowed the claim petition by granting compensation of Rs.3,02,000/- with interest at 7.5% per annum through out. However, made the respondents liable to pay 50% of the said amount i.e. Rs.1,51,000/- on the ground of contributory negligence.

5. Dissatisfied with the quantum of compensation, the appellant/claimant filed the present appeal, seeking for enhancement of the compensation.

6. Heard the learned counsel for the appellant-claimant and the learned Standing Counsel for the respondents-RTC.

7. Learned counsel for the appellant-claimant contends that the trial Court erred in holding that there is contributory negligence on the part of both the claimant and the driver of the crime vehicle and deducting 50% of the compensation awarded as there is no evidence at all to prove the said contention even the driver of the crime vehicle also was not examined by the respondents though he is their employee; that the trial Court though the claimant produced Disability

Certificate issued by the Medical Board indicating that the claimant suffered from 40% disability, did not take into consideration; that the Trial Court also ignored in granting 40% future prospects as the claimant is aged about 19 years only at the time of accident as held by the Apex Court in **Natinal Insurance Co. Ltd. v. Prinay Sethi**¹; and that since the claimant was used to run tuitions and earn an amount of Rs.10,000/- per month, the trial Court ought to have taken his monthly salary @ Rs.10,000/- per month. In support of his contention, he relied on the judgment of the Apex Court in **V.Mekala v. M.Malathi and another**². Therefore, he prayed to grant fair compensation.

8. Sri C.Sunilkumar Reddy, learned Standing Counsel for the respondents-RTC, contends that as seen from the FIR, it is clear that while the claimant was trying to catch the running bus, he himself fell down and caused to the untoward incident and therefore there is negligence on the part of the claimant; that since the claimant is a student and also non-earning member to the family, that too, the trial Court already granted an amount of Rs.50,000/- towards loss of career, future prospects cannot be granted as contended by the claimant; and that the trial Court already awarded higher compensation, therefore, it cannot be enhanced more than that and he prayed to dismiss the appeal.

9. A perusal of the record shows that the claimant is a student studying intermediate second year. For the sake of proof of

¹ 2017 (6) 170 (SC)

² 2015 (5) ALD 42 (SC)

income, the trial Court has taken income of the claimant @ Rs.30,000/- per annum as notional income based on his oral evidence that he is running tuitions for classes VII and X and earning Rs.5,000/- per month. But as contended by the learned counsel for the claimant, in **V.Mekala** (2 supra), wherein, the Apex Court in a case of student of 16 years, the notional income was considered @ Rs.10,000/- per month. But this Court feels that since the claimant has indicated in his claim petition that he is earning only Rs.5,000/- per month, the same is taken on record and considered his income @ Rs.5,000/- per month; further the claimant is entitled to be granted 40% future prospects as decided by the Apex Court in **Prinay Sethi** (2 supra) as the claimant is self-employed. Then his monthly income comes to Rs.7,000/- and it comes to Rs.84,000/- per annum including 40% future prospects. After deducting 40% disability from that income, and applying multiplier '18', his loss of dependency comes to Rs.6,04,800/-. Accordingly, the compensation granted by the trial Court under the head of 'loss of dependency' is enhanced from Rs.2,16,000/- to Rs.6,04,800/-. Therefore, total compensation as such to be granted is Rs.6,90,800/-, but as held by the trial Court that there is contributory negligence, it makes the respondents liable to pay 50% only of it, the claimant is finally entitled to be granted total compensation of Rs.3,45,400/-.

10. Except the above modification, the compensation awarded by the Trial Court under all other additional heads shall remain unchanged.

11. In the result, the appeal is allowed in part by enhancing the compensation awarded by the trial Court from Rs.1,51,000/- to Rs.3,45,400/- (Rupees Three Lakhs Forty Five Thousand and Four Hundred only). The enhanced amount of compensation shall carry interest at 7.5% per annum. The appellant/claimant is directed to pay deficit Court Fee. The respondents are directed to deposit the enhanced amount along with proportionate costs and interest within two months from the date of receipt of a copy of this order. On such deposit, the appellant/claimant is permitted to withdraw the entire amount. No costs.

12. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE T.AMARNATH GOUD

Date: 20.08.2019
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