

HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.1572 of 2006

JUDGMENT:

This appeal is filed by the appellant-claimant aggrieved by the Order and Decree dated 01-02-2006 passed in O.P.No.573 of 2002 by the Motor Vehicle Accidents Claims Tribunal-cum-District Judge, Nizamabad (for short, the Tribunal).

2. Brief facts of the case are that the claimant filed the claim petition against the respondents claiming compensation of Rs.4.00 lakhs for the injuries sustained by him in the accident took place on 27-04-2002 due to the rash and negligent driving of the driver of the crime vehicle bearing No.HR 38/C 5917 when he is proceeding in an auto from Nizamsagar to Patancheru.

3. In the claim petition, the 2nd respondent-insurer 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 Tribunal came to the conclusion that the accident occurred due to the rash and negligent driving on the part of the driver of the crime vehicle. So far as granting of compensation is concerned, the Tribunal granted an amount of Rs.59,154/- i.e. Rs.50,000/- towards disability; Rs.5,000/- towards pain and suffering and Rs.4,154/-

towards medical expenses, payable by both the respondents jointly and severally, with interest at 7.5% per annum through out.

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 2nd respondent-insurer.

7. Learned counsel for the appellant-claimant contends that the Tribunal erred in awarding fixed amount of Rs.50,000/- towards disability instead of taking 40% disability and also ignored in granting compensation towards insertion of rod and operation etc. Hence, he prayed for fair compensation.

8. Learned Standing Counsel for the 2nd respondent, contends that the Tribunal awarded compensation in a just and proper manner and he supported the order passed by the Tribunal.

9. According to the evidence of P.W.2, doctor, and Ex.A-7, disability certificate, the claimant is seriously injured in the accident; that as per Ex.A-5, wound certificate, six injuries are found, out of which, one fracture of both bones i.e. displacement of left leg with shortening and limping and surgical injury etc. and he needs insertion of rod and grafting of bones is also required. P.W.2 has estimated an amount of Rs.30,000/- towards treatment and the claimant also needs

four or five months' bed rest. Therefore, an amount of Rs.30,000/- is granted towards operation i.e. insertion of rod etc.

10. Insofar as 'disability' is concerned, the Tribunal awarded Rs.50,000/-. Considering the seriousness of the fractures and injuries sustained by the claimant, this amount is very meager and therefore the Tribunal ought not to have fixed consolidated amount of Rs.50,000/- and when the percentage of disability is accepted, automatically, the principle as laid down by the Apex Court in **Syed Saleem v. Abdul Shukur and another**¹ needs to be applied. Then the compensation under this head is enhanced by calculating @ 40% disability.

11. Now coming to the quantum of compensation under 'loss of income for disability' is concerned, admittedly, the claimant is working as a Manager in a hotel and earning Rs.200/- per day. Hence, fixing an amount of Rs.6,000/- per month as notional income of the claimant is reasonable. Further, as already held by this Court regarding disability @ 40%, after deducting the remaining amount, his income comes to Rs.2,400/- p.m. i.e. Rs.28,800/- per annum. Further, considering the seriousness of disability of the claimant, it will not have any impact on his future earnings and hence, future prospects cannot be awarded as he can continue his occupation as a Manager. Further, since the claimant is aged about 20 years at the time of accident, the correct multiplier is '18' as per **Smt. Sarla Varma v.**

¹ 2007 (1) ALD 382

Delhi Transport Corporation². Hence, the total loss of income in respect of the disability comes to Rs.5,18,400/- (Rs.28,800/- x 18).

12. Further, since the claimant sustained fracture injury and he was under treatment for a period of 15 days for medical care in hospital, and also as stated by the doctor, he needs at least two more months bed rest, he is entitled to be granted an amount of Rs.12,000/- i.e. @ Rs.200/- per day towards 'loss of pay' for a period of two months.

13. Further, so far as compensation under 'pain and suffering' is concerned, in my considered view, it is just and proper to enhance the same from Rs.5,000/- to Rs.10,000/-. Hence, the claimant is granted Rs.10,000/- towards 'pain and suffering' instead of Rs.5,000/-.

14. Except the above modification, the compensation of Rs.4,154/- awarded by the Tribunal towards medical expenses shall remain unchanged.

15. Therefore, the claimants are granted total compensation of Rs.5,74,554/- (rounded off to Rs.5,75,000/-) under the following heads:

Sl.No.	Name of Head	Awarded by Tribunal Rs.	Awarded by this Court Rs.
01.	Loss of income for disability	50,000/-	5,18,400/-
02.	Loss of income for a period of two months	Nil	12,000/-

² (2009) 6 S.C.C. 121

03.	Operation for insertion of rod etc.	Nil	30,000/-
04.	Pain and suffering	5,000/-	10,000/-
05.	Medical expenses	4,154/-	4,154/-
Total		59,154/-	5,74,554/- (5,75,000/-)

16. In the result, the appeal is allowed by enhancing the compensation awarded by the Tribunal from Rs.59,154/- to Rs.5,75,000/- (Rupees Five Lakhs Seventy Five Thousand 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 appellants/claimants are permitted to withdraw the entire amount. No costs.

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

JUSTICE T.AMARNATH GOUD

Date: 06.11.2019

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