

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.13 OF 2011

JUDGMENT:

This appeal is filed by the appellant-claimant aggrieved by the Award and Decree dated 02.08.2010 passed in O.P.No.38 of 2007 by the Motor Accident Claims Tribunal-cum-I Additional District Judge, L.B.Nagar, Ranga Reddy District (for short, the Tribunal).

2. The brief facts of the case are that on 26.10.2006 at about 8.30 P.M., while the appellant was going by walk by the side of the road towards Vanasthalipuram, and when he reached near Vishnu Theatre on National Highway No.9, lorry bearing No.ABT 6248, came with high speed and in a rash and negligent manner and dashed the appellant. Due to the sudden impact, the appellant sustained fracture of left leg and also injuries all over his body. He filed the aforesaid OP against respondent Nos.1 and 2, owner and insurer of the lorry, respectively, claiming compensation of Rs.6,00,000/- for the injuries sustained by him.

3. Before the Tribunal, respondent No.1 remained *ex parte*. Respondent No.2 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 of the driver of the lorry and awarded total compensation of Rs.3,27,000/- with

interest @ 7.5% per annum. Dissatisfied with the quantum of compensation, the appellant filed the present appeal, seeking enhancement of the same.

5. Sri Kasireddy Jagathpal Reddy, learned counsel appearing for the appellant, submitted that the appellant was a vegetable vendor, he used to sell vegetables in market yard (rythu bazaar) and due to the accident, his left leg was amputated below knee level, due to which, he is unable to do the work which he was doing earlier and hence, his disability is to be treated as 100%. He further submitted that as per the judgment of the Hon'ble Supreme Court in **Jagdish V. Mohan**¹, the appellant is entitled to 40% increment towards future prospects. He further submitted that in **Syed Sadiq V. United India**², the Hon'ble Supreme Court fixed income of a vegetable vendor at Rs.6,500/- per month and, as the appellant is a vegetable vendor, his income also to be taken into consideration at Rs.6,500/- per month. He also sought to enhance the compensation under the heads of loss of amenities, attendant charges, loss of earnings and pain and suffering.

6. Sri T.Ramulu, learned counsel appearing for respondent No.2, submitted that the Tribunal passed a well reasoned order and sought to dismiss the appeal.

7. As the appellant is stated to be the vegetable vendor, as per **Syed Sadiq's** case (supra), I am inclined to take the income of the appellant at Rs.6,500/- per month. Though the learned counsel for

¹ (2018) 4 SCC 571

² 2014 (2) SCC 735

the appellant argued that the disability of the appellant can be taken into consideration at 100%, the same cannot be appreciated for the simple reason that the disability is to be considered at 100% in cases only if there is 100% disability to do the work the workman was doing earlier. In the present case, as per evidence of P.W.3, the appellant got permission to sit and sell the vegetables in Rythu Bazar and earning more than Rs.10,000/- per month by doing the same. Therefore, the disability of the appellant cannot be considered at 100% and the argument of the learned counsel for the appellant in this regard is rejected. Hence, the appellant is entitled to 40% future prospects as per **Jagdish's** case (supra), but not 100%. As the appellant was aged about 35 years at the time of accident, the appropriate multiplier is '16'. Hence, the compensation under the head 'permanent disability' comes to Rs.8,73,600/- {Rs.9,100/- (Rs.6,500/- + 40%) X 12 X 16 X 50%}. The Tribunal awarded Rs.5,000/-, Rs.5,000/-, Rs.10,000/- and Rs.7,000/- loss of income towards attendant charges, pain and suffering, loss of amenities and loss of income respectively, which this Court is enhanced to Rs.10,000/-, Rs.15,000/-, Rs.20,000/- and Rs.13,000/- respectively. The other amounts granted by the Tribunal need no interference and the same are confirmed. Therefore, the total compensation would be as under:

Sl.No.	Name of Head	Awarded by Tribunal	Awarded by this Court
01.	Transportation	Rs.5,000/-	Rs.5,000/-
02.	Attendant charges	Rs.5,000/-	Rs.10,000/-
03.	Extra-nourishment	Rs.5,000/-	Rs.5,000/-
04.	Clothing and others	Rs.1,000/-	Rs.1,000/-
05.	Pain and suffering	Rs.5,000/-	Rs.15,000/-
06.	Loss of amenities	Rs.10,000/-	Rs.20,000/-

07.	Disability	Rs.2,24,000/-	Rs.8,73,600/-
08.	Artificial limb	Rs.65,000/-	Rs.65,000/-
09.	Loss of income	Rs.7,000/-	Rs.13,000/-
TOTAL		Rs.3,27,000/-	Rs.10,07,600/-

8. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed enhancing the compensation amount awarded by the Tribunal from Rs.3,27,000/- to Rs.10,07,600/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of claim petition till realization. As the appellant claimed only Rs.9,00,000/-, he is directed to deposit deficit Court fee before the Tribunal. Miscellaneous petitions pending, if any, shall stand closed. No costs.

Date: 04.09.2019
Shr

T.AMARNATH GOUD, J

