

THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

MACMA NO. 1085 OF 2006

JUDGMENT:

This appeal is directed by the claimant against the order and decree dated 03.02.2006 passed by the Motor Accidents Claims Tribunal-cum-I-Additional District Judge, Adilabad (for short 'the Tribunal'), in O.P.No.639 of 2002, whereby the tribunal granted compensation of Rs.73,570/- on account of the motor vehicle accident occurred on 24.04.2002 at about 10.45 a.m, near I.B.Jainath, when the petitioner was traveling in a Tempo (van) bearing registration No.MH 30 B 2360 in the capacity of cleaner from Gomutri to Pippalgaon village and in the meanwhile, a lorry bearing registration No.AP 1 T 866 being driven by its driver came with high speed and in a rash and negligent manner from the opposite direction and dashed the said tempo (van) near I.B. Jainath, for which the petitioner sustained several fractures and simple injuries and also internal injuries on the several parts of his body, he was shifted to the Government Hospital, Adilabad, where he had undergone treatment as inpatient for two days and thereafter, referred to the Medical College and Hospital, Nagpur and that the petitioner underwent treatment as inpatient for 20 days from 26.04.2002 to 15.05.2002 and that surgery was conducted for right hand fracture and pins

were inserted and that another surgery was conducted to his right leg and his right leg was amputated upto knee level and that the petitioner again admitted in Government Hospital, Adilabad on 18.05.2002 and took treatment for 34 days from 18.05.2002 to 22.06.2002, but he could not completely recovered, as against the claim of Rs.3,00,000/-.

2. For the sake of convenience, the parties herein are referred to as arrayed in the tribunal.

3. Respondents filed their counters denying the claim petition. In order to prove the case of the petitioner, himself examined as PW.1 and Dr Tippe Swamy was examined as PW.2 and marked Exs.A.1 to A.11. No oral or documentary evidence is adduced on behalf of the respondents.

4. On the strength of the oral and documentary evidence, the tribunal framed the following issued:

- 1) Whether the petitioner sustained injuries in the accident occurred on 24.04.2002 due to rash and negligent driving of vehicle bearing No. AP 1 T 866 by its driver?
- 2) Whether the petitioner is entitled for any compensation, if so, to what amount and against which of the respondents?
- 3) To what relief?

5. On considering the oral and documentary evidence the tribunal granted compensation of Rs.73,570/- with interest @ 7% per annum and that due to rash and negligent driving of the 1st respondent and the insurance policy is in force, owner and insurance company are liable to pay the compensation.

6. Learned counsel for the appellant/claimant contended that though the claimant received compound fracture to both the bones of right leg, fracture to right femur, fracture to the right elbow, injury on right eye and other injuries and also PW.2-doctor assessed the disability at 60%, the tribunal granted meager compensation and taken the disability at 30% and prayed to enhance the compensation.

7. Learned standing counsel appearing for the insurance company submitted that the order passed by the tribunal is well reasoned and that the compensation granted by the tribunal is just and reasonable and that in the absence of proof of income, the income taken at Rs.1,000/- per month by the tribunal is just and proper and hence, the appeal is liable to be dismissed confirming the order of the tribunal.

8. A perusal of the material available on record and having regard to the facts and circumstances of the case, the disability in the light of Ex.A.11 – disability certificate cannot be denied and at the same time, the disability is show at 60%.

But without any cogent reason the tribunal reduced the disability at 30%, though it is calculated on the overall body, is unjust. Even according to the schedule under the Workmen Compensation Act, the amputation of limb is treated as 50%. Therefore, taking the same into consideration, this Court feels considering disability at 50% is just and proper. In so far fixing notional income of the claimant at Rs.1,000/- is very meager in the absence of proof. As per the decision of the Apex Court in **Ramachandrappa v Royal Sundaram Alliance Insurance Co. Ltd.**¹, notional income of Rs.4,500/- can be taken as monthly income and accordingly, the same is considered. When the age of the deceased is 19 years, as per the decision of the Apex Court in **Sarala Verma and others v Delhi Transport Corporation and another**², the relevant multiplier applicable is '18'. The disability comes to Rs. 4,86,000/- (Rs.4,500/- x 12 x 18 x 50/100). The other heads i.e. pain and suffering Rs.10,000/- and medical expenses Rs.5,970/- remain undisturbed. Thus, the claimant is entitled for total compensation of Rs.5,01,970 (Rs.4,86,000/- + Rs.10,000/- + Rs.5,970/-), which rounded to Rs.5,00,000/-. The petitioner is entitled for interest @ 7.5% on the enhanced compensation.

¹ (2011) 13 SCC 236

² 2009 ACJ 1298

9. Though the claim is made for Rs.3,00,000/- in order to grant just and proper compensation for the reasons indicated above and in the light of the decision of the Apex Court in **Nagappa v Gurudayal Singh**³ the compensation awarded can be more than the claim, the present appeal needs to be allowed. The claimant is entitled to withdraw the compensation amount soon after the deposit is made. The claimant has to pay deficit court fee on over and above the claim amount and if the deficit court fee not paid as per Rule 475 of the M.V. Rules before the Tribunal, the claimant cannot be permitted to execute for the enhanced amount. Both the respondents are liable to pay the compensation amount jointly and severally.

10. In view of the above, the appeal is allowed. There shall be no order as to costs.

Miscellaneous petitions if any, shall stand closed.

T.AMARNATH GOUD,J

Date: 30.09.2019
kvrn

³ 2003(2) SCC 274