

HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.2386 OF 2009

JUDGMENT:

Aggrieved by the Judgment and decree, dated 08.01.2008, passed by the Chairman, Motor Accident Claims Tribunal-cum-II Additional District Judge (Fast Track Court), Nizamabad, in O.P.No.1929 of 2002, the appellant-claimant preferred the present appeal under Section 173 of the Motor Vehicles Act, 1988 (for short 'Act') seeking enhancement of the compensation.

2. The appellant herein is the claimant and the respondents herein are the respondents before the Court below.

3. For the sake of convenience, the parties herein are referred to as they are arrayed before the Court below.

4. Brief facts that led to filing of the claim petition are that on 12.11.2002 at about 5:00 PM, the claimant was paddling the cycle from Oldgunj towards Dubba side in Nizamabad by the side of the road very slowly and when he reached in front of Tonduri Sayanna's house, an Auto bearing No.AP-25-U-1420 driven by its driver, came from opposite side at high speed in a rash and negligent manner and dashed the claimant. Due to which, the claimant fell down from the cycle and sustained fracture to left leg, toes and skull and other injuries all over the body. Immediately, after the accident, he was shifted to District Headquarters Hospital, Nizamabad, where he was treated by a team of Doctors and operated. Thereafter, the claimant was referred to Gandhi Hospital, Secunderabad, for further treatment. Even now the claimant is

taking treatment in private hospitals and incurred an amount of Rs.2,00,000/- for treatment. On account of injuries sustained in the accident, he also incurred permanent disability. Therefore, the petitioner is entitled to compensation of Rs.24,82,000/- towards special and general damages, but he is claiming Rs.4,00,000/- in lump sum as compensation. The accident occurred due to rash and negligent driving of driver of the auto in which the 1st respondent is the owner and the 2nd respondent is insurer and insurance policy was in force on the date of accident.

5. Though the 1st respondent entered appearance, did not file any written statement. The 2nd respondent filed written statement denying all the averments made in the petition. It is stated that neither the petitioner nor the 1st respondent has informed the alleged accident and the 2nd respondent came to know about the accident on receipt of notice from the Tribunal. Therefore, the 2nd respondent is not liable to pay the compensation. If any compensation is awarded against the 2nd respondent, the same may be recovered from the 1st respondent. It is further stated that the quantum of compensation claimed by the claimant is very high and excessive and hence, he prayed to dismiss the petition.

6. The Court below framed three issues for trial. During enquiry P.Ws.1 and 2 were examined and got marked Exs.A.1 to A.12 on behalf of the claimant. On behalf of the respondents, no oral evidence was adduced, but Ex.B.1-copy of policy was marked.

7. After hearing both sides and analyzing the entire evidence on record, the Court below gave a finding that the accident had occurred due to rash and negligent driving of driver of the auto and awarded a sum of Rs.80,000/- as compensation with interest at the rate of 7.5% per annum thereon from the date of petition till realization.

8. Dissatisfied with the quantum of amount awarded by the Court below, the appellants preferred the present appeal.

9. Heard the learned counsel for the appellant and the learned counsel for the respondents.

10. Learned counsel for the appellant would submit that though the appellant had sustained fracture injury and the District Medical Board had assessed 40% disability, the Tribunal granted only Rs.50,000/- towards disability; that the Tribunal has not discussed the loss of earnings of the appellant though he is working as Supervisor of Market Committee, Nizamabad, and earning Rs.20,000/- per month; that the appellant was in the hospital for more than a month as inpatient; that the compensation awarded by the Tribunal is very meagre and hence, he prays to grant compensation as claimed by the appellant.

11. On the other hand, learned Standing Counsel for the 2nd respondent would submit that there is no infirmity in the order passed by the Tribunal as the Tribunal has gone through the entire evidence on record; that the Tribunal has dealt with each and every head and arrived at the sums to which the appellant was entitled, as such, requested to dismiss the appeal.

12. Though the appellant filed Ex.A.10-Disability certificate issued by the Medial Board for Disabled, Government Hospital, Nizamabad, District, assessing the disability as 40%, the Tribunal without assigning any reason, erred in awarding lump sum amount of Rs.50,000/- towards disability. To prove the income, the appellant also filed Ex.A.9-salary certificate issued by Selection Grade Secretary, Agriculture Market Committee, Nizamabad, whereunder the salary of the appellant is shown at Rs.7,109/- per month, but, the Tribunal without assigning any reason erred in taking the same into consideration for the purpose of awarding loss of earnings.

13. It is not in dispute that the appellant filed Ex.A.9-salary certificate, which shows that he is drawing salary of Rs.7,109/-, per month. Considering the same, this Court is inclined to take the monthly income of the appellant at Rs.7,109/-. Since the appellant is aged about 50 years at the time of accident, as per the Judgment of **Sarla Verma and others v. Delhi Transport Corporation and Another**¹, the appropriate multiplier is '13'. The appellant also examined P.W.2, the Doctor who treated him and issued Ex.A.10-disability certificate assessing the disability at 40%. Therefore, this Court has no hesitating in taking the disability at 40%. Thus the loss of disability comes to Rs.4,43,601/- (7109/- x 12 x 13 x 40/100). The Tribunal awarded an amount of Rs.10,000/- towards pain and suffering on account of injuries, Rs.10,500/- towards treatment expenditure, Rs.6,000/- towards cost of medicines, Rs.2,000/- towards transportation charges, Rs.1,500/-

¹ (2009) 6 SCC 121

towards extra-nourishment, which needs no interference by this Court. Thus, in all the appellant is entitled to Rs.4,73,601/-.

14. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed enhancing the compensation amount awarded by the Court below from Rs.80,000/- to Rs.4,73,601/-. The enhanced amount shall carry interest @ 7.5% per annum. As the appellant claimed only Rs.4,00,000/-, he is directed to deposit deficit Court fee before the Court below. The respondents are directed to deposit the enhanced amount along with interest within two (2) months from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the same.

Miscellaneous petitions, if any, pending in this appeal shall stand closed. There shall be no order as to costs.

AUGUST 06, 2019
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T. AMARNATH GOUD, J

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Date:06.08.2019

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