

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.448 OF 2012

JUDGMENT:

This appeal is filed by the appellant-claimant aggrieved by the Order and Decree dated 22.09.2009 passed in M.V.O.P.No.767 of 2007 by the Motor Accidents Claims Tribunal (II Additional District Judge), Warangal (for short, the Tribunal).

2. The brief facts of the case are that on 05.12.2006, while the appellant and another were proceeding on motorcycle bearing No.AP12F 5680 from Hyderabad to Kazipet, and when they reached outskirts of Komalla, due to high mast lights of the opposite coming vehicles, the rider of the motorcycle did not observe a stationed lorry bearing No.MH13R 1969 in the middle of the road without lights, and dashed it. In the said accident, the appellant sustained head injury and other grievous injuries. He filed aforesaid MVOP against respondents Nos.1 and 2, owner and insurer of motorcycle, and respondent Nos.3 and 4, owner and insurer of lorry, claiming compensation of Rs.13,00,000/- for the injuries sustained by him.

3. Before the Tribunal, respondent Nos.1 and 3 remained *ex parte*. Respondent Nos.2 and 4 filed their separate counters 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 respondent Nos.1

and 3 were equally responsible for occurrence of the accident and awarded compensation of Rs.7,46,000/- with interest @ 6% per annum. The Tribunal directed respondent Nos.1 and 2 together and respondent Nos.3 and 4 together to pay 50% each of the compensation amount to the appellant. Dissatisfied with the quantum of compensation, the appellant filed the present appeal, seeking enhancement of the same.

5. Sri M.Ajay Kumar, learned counsel for the appellant, submitted that though the appellant did not file any proof of income, his income has to be fixed at Rs.4,500/- per month as per the decision of the Hon'ble Supreme Court in **Ramachandrappa Vs. Royal Sundaram Alliance Insurance Co.Ltd.**¹. He further submitted that in the accident, the appellant suffered head injury, due to which, he became dumb and the doctors also declared him as unsound mind person. The appellant cannot lead an independent life on his own and hence, his disability can be considered at 100%. In support of his contention, he relied on a decision of this Court in **Pamarthi Subba Rao V. H.Rama Rao**². He further submitted that as per the judgment of the Hon'ble Supreme Court in **Jagdish V. Mohan**³, the appellant is entitled to 40% increment towards future prospects. He further submitted that in view of the condition of the appellant, he needs one attendant and hence, the appellant is entitled to attendant charges.

¹ (2011) 13 SCC 236

² 2009 ACJ 652

³ (2018) 4 SCC 571

Basing on the said submissions, the learned counsel seeks to enhance the compensation amount.

6. Sri Ramachandra Reddy Gadi, learned Standing Counsel for respondent No.2, submitted that in the absence of any disability certificate, 100% disability cannot be taken into consideration. He further submitted that the appellant was aged about 31 years at the time of accident and the appropriate multiplier for calculation of compensation is '16' as per **Smt.Sarla Varma Vs. Delhi Transport Corporation**⁴, but the Tribunal wrongly adopted the multiplier '17'.

7. P.W.3, the doctor who treated the appellant, in his evidence deposed that the appellant suffered head injury, due to which, he became disable of speaking and understanding and he is 100% dependant on others and also became a person of unsound mind. Therefore, I am inclined to fix the disability of the appellant at 100%, as per **Pamarthi Subba Rao's** case (supra). As rightly contended by the learned counsel for the appellant, the appellant is entitled to 40% future prospects as per **Jagdish's** case (supra). Since the appellant did not file any evidence to prove his income, as per **Ramachandrappa's** case (supra), I am inclined to take the income of the appellant at Rs.4,500/- per month. As the appellant was aged about 31 years at the time of accident, the appropriate multiplier is '16'. Hence, the compensation under the head 'permanent disability' comes to Rs.12,09,600/- {Rs.6,300/-

⁴ 2009(6) SCC 121

(Rs.4,500/- + 40%) X 12 X 16}. In the facts and circumstances of the case, I am inclined to grant attendant charges for six months @ Rs.100/- per month, which comes to Rs.18,000/-, and also Rs.20,000/- towards transportation charges. Though the appellant filed Ex.A.10-discharge summary and medical bills showing that he incurred an amount of Rs.82,624/-, the Tribunal erroneously did not take into consideration. Hence, I am inclined to grant the said amount to the appellant. The other amounts granted by the Tribunal need no interference and the same are confirmed. Therefore, the total compensation comes to Rs.18,21,224/- (Rs.12,09,600/- + Rs.18,000/- + Rs.20,000/- + Rs.82,624/- + Rs.45,000/- + Rs.3,36,000/- + Rs.1,10,000/-).

8. In the result, the Motor Accident Civil Miscellaneous Appeal is allowed enhancing the compensation amount awarded by the Tribunal from Rs.7,46,000/- to Rs.18,21,224/-. The enhanced amount shall carry interest @ 7.5% per annum from the date of claim petition till realization. Respondent Nos.2 and 4 are directed to pay the compensation amount equally to the appellant. As the appellant claimed only Rs.13,00,000/-, he is directed to deposit deficit Court fee before the Tribunal. Miscellaneous petitions pending, if any, shall stand closed. No costs.

T.AMARNATH GOUD, J

Date: 20.08.2019
TJMR