

HON'BLE SRI JUSTICE T.AMARNATH GOUD

M.A.C.M.A. No.1618 of 2006

JUDGMENT:

This appeal is filed by the appellant-claimant aggrieved by the Order and Decree dated 17-04-2006 passed in O.P.No.725 of 2002 by the Motor Vehicle Accidents Claims Tribunal-cum-I Additional District Judge, Adilabad (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.2.00 lakhs for the injuries sustained by him in the accident occurred on 16-05-2002 due to the rash and negligent driving of the driver of the tractor and trailer bearing No.AP 1/D 6734 and AP 1/T 5402, when he is proceeding in the same vehicle as a labourer to go to Jainath village to unload the sand.

3. In the claim petition, the 1st and 3rd respondents filed their counters denying the averments of the claim petition and contended that the amount claimed is excessive and prayed to dismiss the claim petition against them.

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 only. So far as granting of compensation is concerned, the Tribunal granted an amount of Rs.58,129/- i.e. Rs.25,000/-

towards pain and suffering and Rs.33,129/- towards medical expenses, payable by respondents Nos.1 to 3 jointly and severally, with interest at 7% 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 3rd respondent-insurer.

7. Learned counsel for the appellant-claimant contends that the Tribunal ignored in awarding compensation under 'disability' and also failed to appreciate the evidence of severity and grievous nature of the injuries suffered by the claimant and ignored to grant compensation towards transportation and extra nourishment 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 Ex.A-1, FIR, the driver of the crime vehicle drove it in a rash and negligent manner and due to which, the claimant sustained head injury. P.W.2 also stated in his evidence that the claimant was hospitalized and that he performed surgery to brain in NIMS hospital and after conducting operation on 16-05-2002, the claimant was discharged from hospital on

23-05-2002. Further as per Ex.C2, disability certificate, the claimant suffered 60% disability and will not be in a position to sit properly and understand the suggestions of others. Further he is suffering from weakness of right side hand and leg and was advised to follow up treatment for physiotherapy. Further, the claimant being a labour cannot do his work in the normal course since his right hand and leg have become weak and also suffering from partial speech problem. In view of the same, this Court feels that considering 60% disability while awarding compensation under the head of 'loss of income for disability' based on the evidence of P.W.2 and Ex.C-2, is just and proper.

10. As seen from the evidence adduced by the claimant, he is doing as a labourer and earning some income to eak out his livelihood. Hence, fixing an amount of Rs.3,000/- per month as notional income of the claimant is reasonable. As already held by this Court, if 60% disability is taken, after deducting the remaining amount, his income comes to Rs.1800/- p.m.

11. In spite of that, as per the decision of the Supreme Court in **National Insurance Company Limited Vs. Pranay Sethi¹**, the claimant is entitled to be granted future prospects at 40%. Then his monthly income comes to Rs.2,520/- (1800 + 720) per month i.e. Rs.30,240/- per annum.

¹ 2017 (6) 170 (SC)

12. Further, since the claimant is aged about 35 years at the time of accident, the correct multiplier is '16' as per **Smt. Sarla Varma v. Delhi Transport Corporation**². Hence, the total loss of income in respect of the disability comes to Rs.4,83,840/- (Rs.30,240/- x 16).

13. Further, since he was underwent to operation for brain and had taken bed rest for some time, an amount of Rs.3,000/- is awarded towards loss of earnings for one month period. Likewise, he is also awarded an amount of Rs.5,000/- towards extra-nourishment and Rs.1,000/- towards transportation.

14. Except the above modification, the compensation of Rs.25,000/- towards pain and suffering and Rs.33,129/- towards medical expenses awarded by the Tribunal shall remain unchanged.

15. Therefore, the claimants are granted total compensation of Rs.5,50,969/- (rounded off to Rs.5,51,000/-) under various heads as follows:

Sl.No.	Name of Head	Awarded by Tribunal Rs.	Awarded by this Court Rs.
01.	Loss of income for disability	Nil	4,83,840/-
02.	Medical expenses	33,129/-	33,129/-
03.	Pain and suffering	25,000/-	25,000/-
04.	Loss of income for one month	Nil	3,000/-
05.	Extra-nourishment	Nil	5,000/-
06.	Transportation	Nil	1,000/-
Total		58,129/-	5,50,969/- (5,51,000/-)

² (2009) 6 S.C.C. 121

16. In the result, the appeal is allowed by enhancing the compensation awarded by the Tribunal from Rs.58,129/- to Rs.5,51,000/- (Rupees Five Lakhs and Fifty One 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 appellant/claimant is 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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